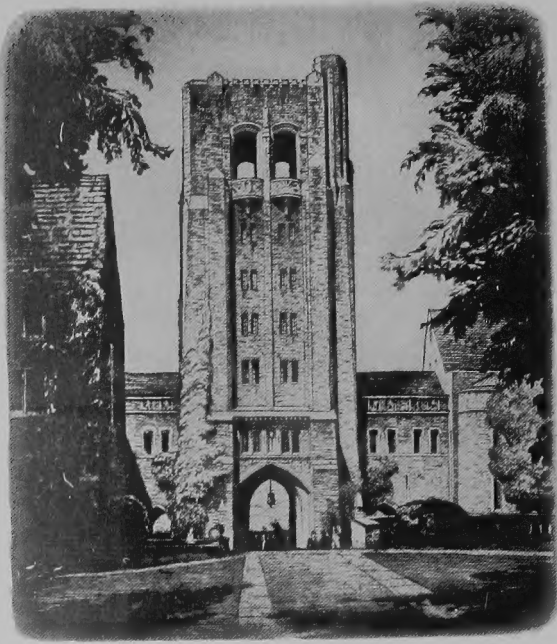


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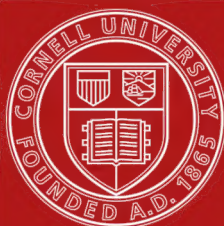
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BRADBURY'S  
WORKMEN'S COMPENSATION  
AND  
STATE INSURANCE LAW

BY  
*OWER*  
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AND VARIOUS WORKS ON PLEADING AND PRACTICE

SECOND EDITION

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# BRADBURY'S WORKMEN'S COMPENSATION LAW

## VOLUME TWO

### CHAPTER XXIV

#### TEXTS OF THE COMPENSATION ACTS OF THE AMERICAN STATES

	Page		Page
ARIZONA.....	1053	NEVADA.....	1346
CALIFORNIA.....	1071	NEW HAMPSHIRE.....	1368
CONNECTICUT.....	1144	NEW JERSEY.....	1375
ILLINOIS.....	1163	NEW YORK.....	1393
IOWA.....	1190	OHIO.....	1436
KANSAS.....	1218	OREGON.....	1485
MARYLAND.....	1237	RHODE ISLAND.....	1509
MASSACHUSETTS.....	1244	TEXAS.....	1528
MICHIGAN.....	1269	WASHINGTON.....	1543
MINNESOTA.....	1299	WEST VIRGINIA.....	1572
NEBRASKA.....	1322	WISCONSIN.....	1593

### ARIZONA

In 1913 the State of Arizona codified its laws relating to employer and employé and re-enacted the workmen's compensation law as Chapter VII of that codification. The re-enactment was without substantial change in the old law, but such changes as were made are contained in the statute printed in the text. The original statute was cited as "Article 14, Section 1, Second Session, Laws of 1912, page 23." The re-enactment has new section numbers, beginning with Section 65, but in the body of the law frequent reference is made to the sections under the old section marks. This is very confusing and it has been necessary to insert the old section marks in the margin to understand the references in certain sections to provisions in other sections.

Chapter VI, of the same codification, must be read in connection with Chapter VII, because employés have a right of election, after an accident, whether to claim compensation or sue for damages, and if they sue for damages the action is based on Chapter VI. In the pages which follow therefore Chapters VI and VII.

have both been printed, the latter being the compensation law proper.

## STATE OF ARIZONA

## FOURTH SESSION—1ST LEGISLATURE "LAWS OF 1913"

## CHAPTER VI

LIABILITY OF EMPLOYERS FOR INJURIES TO WORK-  
MEN IN DANGEROUS OCCUPATIONS

SECTION 56. This chapter is and shall be declared to be an Employer's Liability Law as prescribed in Sec. 7, of Article XVIII of the State Constitution.

Act 89, Sec. 1,  
L. 1912, p. 491

SECTION 57. That to protect the safety of employees in all hazardous occupations in mining, smelting, manufacturing, railroad, or street railway, transportation, or any other industry, as provided in said Sec. 7, of Article XVIII of the State Constitution, any employer, whether individual, association, or corporation, shall be liable for the death or injury, caused by any accident due to a condition or conditions of such occupation, of any employee in the service of such employer in such hazardous occupation, in all cases in which such death or injury of such employee shall not have been caused by the negligence of the employee killed or injured.

Sec. 2, id.

SECTION 58. The labor and services of workmen at manual and mechanical labor, in the employment of any person, firm, association, company, or corporation, in the occupations enumerated in the next section hereof are hereby declared and determined to be service in a hazardous occupation within the meaning of the terms of the preceding section.

Sec. 3, id.

By reason of the nature and conditions of, and the means used and provided for doing the work in, said occupations, such service is especially dangerous and hazardous to the workmen therein, because of risks and hazards which are inherent in such occupations and which are unavoidable by the workmen therein.



Arizona

SECTION 59. The occupations hereby declared and determined to be hazardous within the meaning of this Sec. 4, and chapter are as follows:

1. The operation of steam railroads, electrical railroads, street railroads, by locomotives, engines, trains, motors, or cars of any kind propelled by steam, electricity, cable or other mechanical power, including the construction, use or repair of machinery, plants, tracks, switches, bridges, roadbeds, upon, over, and by which such railway business is operated.

2. All work when making, using or necessitating dangerous proximity to gunpowder, blasting powder, dynamite, compressed air, or any other explosive.

3. The erection or demolition of any bridge, building or structure in which there is, or in which the plans and specifications require, iron or steel frame work.

4. The operation of all elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge, building or other structure for conveying materials in connection with the erection or demolition of such bridge, building or structure.

5. All work on ladders or scaffolds of any kind elevated twenty (20) feet or more above the ground or floor beneath in the erection, construction, repair, painting or alteration of any building, bridge, structure or other work in which the same are used.

6. All work of construction, operation, alteration or repair where wires, cables, switchboards, or other apparatus or machinery are in use charged with electrical current.

7. All work in the construction, alteration, or repair of pole lines for telegraph, telephone or other purposes.

8. All work in or about quarries, open pits, open cuts, mines, ore reduction works and smelters.

9. All work in the construction and repair of tunnels, sub-ways and viaducts.

10. All works in mills, shops, works, yards, plants, and factories where steam, electricity, or any other

## Arizona

mechanical power is used to operate machinery and appliances in and about such premises.

Sec. 5, id.

Every employer, whether individual, firm, association, company or corporation, employing workmen in such occupation, of itself or through an agent, shall by rules, regulations, or instructions, inform all employees in such occupations as to the duties and restrictions of their employment, to the end of protecting the safety of employees in such employment.

Sec. 6, id.

SECTION 60. When in the course of work in any of the employments or occupations enumerated in the preceding section personal injury or death by any accident arising out of and in the course of such labor, service and employment, and due to a condition or conditions of such occupations or employment, is caused to or suffered by any workman engaged therein, in all cases in which such injury or death of such employee shall not have been caused by the negligence of the employee killed or injured, then the employer of such employee shall be liable in damages to employee injured, or, in case death ensues, to the personal representative of the deceased for the benefit of the surviving widow or husband and children of such employee; and, if none, then to such employee's parents; and, if none, then to the next of kin dependent upon such employee, and, if none then to his personal representative, for the benefit of the estate of the deceased.

Sec. 7, id.  
modif.

SECTION 61. In all actions hereafter brought against any such employer under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to any employee, or where such injuries have resulted in his death, the question whether the employee may have been guilty of contributory negligence, or has assumed the risk, shall be a question of fact and shall at all times, regardless of the state of the evidence relating thereto, be left to the jury, as provided in Sec. 5, of Article XVIII of the State Constitution; provided however, that in all actions brought against any employer, under or by virtue of any of the

## Arizona

provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.

SECTION 62. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any employer to exempt himself or itself from any liability created by this chapter, shall to that extent be void; provided, that in any action brought against any such employer under or by virtue of any of the provisions of this chapter, such employer may set off therein any sum it has contributed or paid to any insurance, relief, benefit, or indemnity or that it may have paid to the injured employee or his personal representative on account of the injury or death for which said action was brought. Sec. 8, id.

SECTION 63. In all actions for damages brought under the provisions of this chapter, if the plaintiff be successful in obtaining judgment; and if the defendant appeals to a higher court; and if the plaintiff in the lower court be again successful; and the judgment of the lower court is sustained by the higher court or courts; then, and in that event the plaintiff shall have added to the amount of such judgment by such higher court or courts, interest at the rate of 12 per cent per annum on the amount of such judgment from the date of the filing of the suit in the first instance until the full amount of such judgment is paid. Sec. 9, id.

SECTION 64. No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued. Sec. 10, id.

## CHAPTER VII

COMPENSATION FOR INJURIES TO WORKMEN ENGAGED  
IN DANGEROUS AND HAZARDOUS EMPLOYMENT

Act 14. Sec. 1,  
2nd Ses.  
L. 1912, p. 23.

SECTION 65. This chapter is a workman's Compulsory Compensation Law as provided in Section 8, of Article XVIII of the State Constitution.

Sec. 2, id.

SECTION 66. Compulsory compensation shall be paid by his employer to any workman engaged in any employment declared and determined as in the next section hereof (as provided in Sec. 8, of Article XVIII of the State Constitution) to be especially dangerous, whether said employer be a person, firm, association, company, or corporation, if in the course of the employment of said employee personal injury thereto from any accident arising out of, and in the course of, such employment is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its officers, agents, or employee or employees, to exercise due care, or to comply with any law affecting such employment.

Sec. 3, id.

SECTION 67. The employments hereby declared and determined to be especially dangerous (as provided in Sec. 8, of Article XVIII of the State Constitution) within the meaning of this chapter are as follows:

1. The operation of steam railroads, electrical railroads, street railroads, by locomotives, engines, trains, motors, or cars of any kind propelled by a steam, electricity, cable or other mechanical power, including the construction, use or repair of machinery, plants, tracks, switches, bridges, roadbeds, upon, over, and by which such railway business is operated.

2. All work when making, using or necessitating dangerous proximity to gunpowder, blasting powder, dynamite, compressed air, or any other explosive.

3. The erection or demolition of any bridge, build-



Arizona

ing, or structure in which there is, or in which the plans and specifications require, iron or steel frame work.

4. The operation of all elevators, elevating machinery or derricks or hoisting apparatus used within or on the outside of any bridge, building or other structure for conveying materials in connection with the erection or demolition of such bridge, building or structure.

5. All work on ladders or scaffolds of any kind elevated twenty (20) feet or more above the ground or floor beneath in the erection, construction, repair, painting or alteration of any building, bridge, structure or other work in which the same are used.

6. All work of construction, operation, alteration or repair, where wires, cables, switchboards, or other apparatus or machinery are in use charged with electrical current.

7. All work in the construction, alteration or repair of pole lines for telegraph, telephone or other purposes.

8. All work in mines; and all work in quarries.

9. All works in the construction and repair of tunnels, sub-ways and viaducts.

10. All work in mills, shops, works, yards, plants, and factories where steam, electricity, or any other mechanical power is used to operate machinery and appliances in and about such premises.

SECTION 68. In case such employee or his personal representative shall refuse to settle for such compensation (as provided in Sec. 8, of Article XVIII of the State Constitution), and chooses to retain the right to sue said employer (as provided in any law provided for in Sec. 7, Article XVIII of the State Constitution) he may so refuse to settle and may retain said right. Sec. 4, id.

SECTION 69. It is hereby declared and determined to be contrary to public policy that any employer conducting any especially dangerous industry, through any of his or its officers, agents, or employee or employees, shall fail to exercise due care, or fail to comply with any law affecting such employment, in such manner as to Sec. 5, id.

endanger the lives and safety of employees thereof, without assuming the burden of the financial loss through disability entailed upon such employees, or their dependents, through such failure; and it is further declared and determined to be contrary to public policy that the burden of the financial loss to employees in such dangerous employments, or to their dependents, due to injuries to such employees received through such accidents as are hereinbefore mentioned shall be borne by said employees without due compensation paid to said employees, or their dependents, by the employer conducting such employment, owing to the inability of said employees to secure employment in said employments under a free contract as to the conditions under which they will work.

Sec. 6, id.

SECTION 70. The common law doctrine of no liability without fault is hereby declared and determined to be abrogated in Arizona as far as it shall be sought to be applied to the accidents hereinbefore mentioned.

Sec. 7, id.

SECTION 71. When, in the course of work in any of the employments described in the third section above, personal injury by accident arising out of and in the course of such labor, service, or employment, is caused to or suffered by any workman engaged therein, by any risk or failure specified in the section second hereof, then such employer shall be liable to and must make and pay compensation to the workman injured, and his personal representative, when death ensues, for the benefit of the estate of the deceased, for such injury at the rates and in the manner hereinafter set out in this Chapter:

PROVIDED, That the employer shall not be liable under this Chapter in respect of any injury which does not disable the workman for a period of at least two weeks after the date of the accident from earning full wages at the work at which he was employed, at the time of the injury, and

PROVIDED, Further, that the employer shall not be liable under this Chapter in case the employee refuses

Arizona

to settle for such compensation and retains his right to sue as provided in the fourth section of this Chapter.

SECTION 72. When an injury is received by a workman engaged in any labor or service specified in the third section of this Chapter, and for which the employer is made liable as specified in the seventh section hereof, then the measure and amount of compensation to be made by the employer to such workman or his personal representative for such injuries, shall be as follows: Sec. 8, id.

1. If the injury by accident does not result in death within six months from the date of the accident, but does produce or result in total incapacity of the workman for work at any gainful employment for more than two (2) weeks after the accident then the compensation to be made to such workman by his employer shall be a semi-monthly payment commencing from the date of the accident, and continuing during such total incapacity, of a sum equal to fifty (50) per centum of the workman's average semi-monthly earnings when at work on full time during the preceding year, if he shall have been in the employment of such employer for such length of time; but if not for a full year, then fifty (50) per centum of the average wages, whether semi-monthly, weekly, or daily, being earned by such workman during the time he was at work for his employer before and at the time of the accident.

2. In case (1) the accident does not wholly incapacitate the workman from the same or other gainful employment; or (2) in case the workman, being at first wholly incapacitated, thereafter recovers so as to be able to engage at labor in the same or other gainful employment, thereby earning wages then in each case the amount of the semi-monthly payment shall be one-half of the difference between the average earnings of the workman at the time of the accident determined as above provided, and the average amount he is earning, or is capable of earning, thereafter, semi-monthly in the same or other employment—it being the intent and

## Arizona

purpose of this Chapter, that the semi-monthly payments shall not exceed, but equal, from time to time one-half the difference between the amount of average earnings ascertained as aforesaid at the time of the accident, and the average amount which the workman is earning, or is capable of earning, in the same or other employment or otherwise, after the accident and at the time of such semi-monthly payment. Such payments shall cease upon the workman recovering and earning, or being capable of earning, in the same or other gainful employment or otherwise, wages equal to the amount being earned at the time of the accident.

PROVIDED, HOWEVER, that the payments shall continue to be made as herein determined to the workman so long as incapacity to earn wages in the same or other employment continues, but in no case shall the total amount of such payments as provided in sub-sections 1 and 2 of this section exceed four thousand (\$4000.00) Dollars.

3. When the death of the workman results from the accident within six months thereafter, and the workman, at the time of his death, leaves a widow, and a minor child, or children, dependent on such workman's earnings for support and education, then the employer shall pay to the personal representative of the deceased workman for the exclusive benefit of such widow and child, or children, a sum equal to twenty-four hundred times one-half the daily wages or earnings of the decedent, determined as aforesaid, but in no event more than the sum of four thousand dollars (\$4000.00). Such sum shall be paid in lump and held in trust by such representative for such widow and children and applied by him to the support of the widow while she remains unmarried, and to the support and education of the children so long as necessary, and until eighteen (18) years of age, in such way and manner as to him shall seem best and just, under and in accordance with the directions of the court having jurisdiction of the estate of the decedent; any balance remaining unap-

## Arizona

plied at the closing of the estate of the decedent shall be distributed to the decedent's widow (if still his widow), and the children or next of kin, as provided by the law of descents. The personal representative may pay out of said fund the reasonable and necessary expenses of medical attendance and burial of the decedent. If the workman leaves no widow or child, or children, but a father and mother or sister dependent on him for support, then said sum shall be for their benefit to be applied as above provided. If the deceased workman leaves no widow, children, or other dependents, then the employer shall pay the reasonable expenses of medical attendance upon the decedent and also provide and secure his burial in a proper cemetery, which may be chosen by the friends of the decedent.

SECTION 73. Any workman claiming compensation under the provisions of this chapter shall, if requested by the employer, or upon written notice by him given to the employer, submit himself for bodily examination by some competent licensed medical practitioner or surgeon of the county in which the workman then resides, to ascertain and determine the nature, character, extent, and effect of the injury to such workman at the time of such examination for the purpose of ascertaining the semi-monthly compensation then and thereafter to be made. The employer or the workman not having requested the examination may have present at the examination a medical representative by him chosen. Each party shall pay his chosen representative the expenses of such examination. The said notice shall be given at least ten (10) days before the date fixed for the examination, and the place shall be convenient for the workman to be examined. In case the employer is a corporation, the notice may be served on any officer or agent thereof in the said county, and if none there, then elsewhere in the State. The examiner shall make a verified report in writing in duplicate within ten (10) days after the examination and furnish one copy to the employer and one to the workman. If

Sec. 9, id.

## Arizona

any workman neglects or refuses to submit to an examination, his rights to compensation, if any, shall be suspended until he notifies the employer in writing of his readiness to submit thereto. No persons other than the physicians and surgeons aforesaid shall attend any examination except by agreement of the parties. If the employer and the workman each have an examiner and they shall agree upon and join in a report, the same shall be conclusive so long as it remains in force. If either the employer or the employee, having opportunity, fails to provide an examiner, then the report of the examiner making such examination shall likewise be conclusive so long as the same remains in force. If the workman and the employer each have an examiner present, and they disagree as to the nature, character, extent, or effect of the injury, and the degree of incapacity, if any, for labor on the part of the workman at the time of such examination, then they shall join in a written report stating the matters in which they agree, and in which they disagree, and mutually select some disinterested medical practitioner or surgeon of the county to whom the same shall be referred, and who shall proceed promptly to make an examination of the workman as to the matters in disagreement, and the same shall be conclusive so long as such report remains in force, which report shall be made by such disinterested examiner and verified, and a copy thereof furnished to the employer and the workman. For making such examination, such examiner shall be entitled to a fee of Ten Dollars (\$10.00) to be paid one-half by the employer and one-half by the workman at the time of such examination. Such examination may be required by the workman or the employer at periods not shorter than three months from the date of the last examination. The report of any examination shall supersede all previous reports. When there is disagreement between the examiners aforesaid, and they cannot agree upon a third person as above provided, then it shall be the duty of the Chairman of the Board of

Supervisors of the County, on written notice of either the workman or employer, to appoint some licensed medical practitioner or surgeon, who shall be a resident of the county, to make such examination, and said appointee shall be entitled to the same compensation.

SECTION 74. Every workman seeking compensation Sec. 10, id.  
under the provisions of this chapter, where the same is not fatal or does not render him incompetent to give the notice, shall, within two weeks after the day of the accident, give notice in writing to the employer, or his representative employing such workman, or to the foreman or other employee of the employer under whom he was working at the time of the accident, and before the workman has voluntarily left the service of the employer and during his disability. The notice shall state (1) the name and address of such workman, (2) the date and place of the accident, (3) and state in simple words the cause thereof, (4) the nature and degree of the injury sustained, (5) and that compensation is claimed under this chapter. The notice may be written and served personally by the workman or by anyone in his behalf or any person named above in this section, or by mail, postpaid, to such person, addressed to the office, place of business or residence of the person notified. No want or defect or inaccuracy of the notice shall be a bar to the right of the workman to claim and receive compensation under this chapter, or to maintain any proceeding to secure the same, unless the employer proves that he has been seriously prejudiced by such lack of notice. No compensation shall be claimed or allowed so long as such notice is not given. If the workman is killed, or otherwise rendered incompetent to give the notice, the same is not hereby required, nor is any notice required to be given by the personal representative of such deceased person. It shall be the duty of anyone giving a notice as in this section provided, to mail a duplicate copy to the Attorney General of this State.

SECTION 75. Any question which may arise between Sec. 11, id.



the employer and the workman or his personal representative, under this chapter, shall be determined either (1) by written agreement between the parties, or (2) by arbitration, or (3) by reference and submission to the Attorney General of this State; and in case of a refusal or failure of the employer and workman, or such personal representative, to agree upon a settlement by either of the modes above provided, then by a civil action at law, showing such refusal or failure as a reason for suit. If any employer fails to make and pay compensation, as in this chapter provided, for a period of three months after the date of the accident, or for any two months or more after payment of the last monthly compensation, then the injured workman, if surviving, or the personal representative, in case of death, may bring an action in any court of competent jurisdiction to recover and enforce the compensation herein provided. Such action shall be conducted as near as may be in the same manner as other civil actions at law. The action shall be brought within one year after the happening of the accident, or after the non-payment of any semi-monthly installment theretofore fixed by agreement or otherwise; or within one year after the appointment of a personal representative of the decedent. The judgment in such action, when in favor of the plaintiff, shall be for a sum equal to the amount of payments then due and prospectively due under the provisions of this chapter. The judgment shall be for the total amount thereof and collectible without relief from valuation or appraisement laws. And the court awarding the judgment shall, by proper order, direct that the same shall be paid ratably to the workman, if living, in semi-monthly installments until the determination of the periods provided in this chapter, the same as if such payments were being made voluntarily or without suit in conformity with this chapter. The judgment by agreement, if it appears to the court to be for the best interests of the workman, may be paid in lump and not otherwise. The court

Arizona

rendering the judgment is hereby given power from time to time to make such orders touching the matter of payments as may appear best to provide for the maintenance and support of the workman and his family during his infirmity and for his and their benefit and security. The employer shall have the right to stay the judgment in whole, whether the same is to be paid in lump sum or monthly installments, upon securing the same by one or more freehold sureties or a surety company, to be approved by the court rendering the judgment, who shall enter into a recognizance acknowledging themselves bound for the defendant for the payment of the judgment in lump or in partial payments as the same is, or shall be made, payable, together with interest and costs. On failure of any one or more of such payments by the employer, execution may issue out of said court and cause, against such defendant, and his bail from time to time leviable and collectible without relief from valuation or appraisement or stay laws. The recognizance shall be written upon the order book of the court and immediately following the entry of the judgment and signed by each bail and docketed in the judgment docket of the court against such defendant and bailors, which shall bind the property of the same, in the same manner as the judgment binds the property of the employer. In an action by a personal representative of a deceased workman, the court shall determine the proportions of the judgment, whether in lump or in installments, to be distributed between the widow and child, or children, with power to alter and amend the proportionment from time to time on petition of any party interested as the court may deem best for the support, maintenance, and education of such widow and children.

In any action under this chapter the court shall fix and allow, at the time of entering the judgment against the employer, a reasonable fee to the workman's attorney, to be taxed against the employer as costs, and collectible in the same manner. From such allowance

## Arizona

there shall be no right of appeal. Such attorney shall have no claim for compensation upon the judgment or its proceeds, other than as herein provided. But no allowance or any fee payable by the workman to an attorney for services, or any fee payable by the workman to an attorney for services in securing a recovery or disbursement, shall ever exceed twenty-five (25) per centum of the principal of the sum recovered; and the same shall not be made a lien on the recovery of its proceeds, except as may be determined and allowed and fixed by the court.

Sec. 12, id.

SECTION 76. Any workman entitled to monthly or other payments from or to any judgment against any employer as above provided, as compensation shall have the same preferential claim therefor against the property and assets of the employer and any bailor, as now is allowed by law for unpaid wages or personal services. No judgment or any part thereof, nor monthly payments due, or coming due, under this chapter shall be assignable by the workman or subject to mortgage, levy, execution, or attachment. But the same shall stand as a continuing provision for the maintenance and support of such injured workman during his incapacity for the periods provided in this chapter.

Sec. 13, id.

SECTION 77. In case an injured workman, having a right of action under the provisions of this chapter, shall be mentally incompetent at the time when any right or privilege accrues thereunder to him, a guardian may be appointed by any court having jurisdiction, to secure and protect the rights of such workman; and the guardian may claim and exercise any and all of such rights or privileges with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time provided in any of the foregoing sections shall run so long as said incompetent workman has no guardian.

Sec. 14, id. as modified.

SECTION 78. This chapter shall be construed as a continuation of the law contained in chapter XIV of

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Arizona

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the laws of the First Legislature of the State of Arizona, Second Session. All workmen employed by an employer at manual and mechanical labor of the kinds defined in the third section of this chapter shall be deemed and held in law to be employed and working subject to the provisions of this chapter, and the employer and the workman shall alike be bound by and shall have each and every benefit and right given in this chapter the same as if a mutual contract to that effect were entered into between the employer and the workman at any time before the happening of any accident. It shall be lawful, however, for the employer and workman to disaffirm an employment under the provisions of this chapter by written contract between them or by written notice by one to and served upon the other to that effect before the day of the accident;

PROVIDED, such written contract does not provide for less compensation than as provided in this chapter, And in the absence of such written contract or written notice, served as above provided, it shall be taken and held that the employment and service is under this chapter; and the same shall be the sole measure of their respective rights and liabilities when and as provided in this chapter;

PROVIDED, If, after the accident, either the employer or the workman shall refuse to make or accept compensation under this chapter or to proceed under or rely upon the provisions hereof for relief, then the other may pursue his remedy or make his defense under other existing statutes, the state constitution, or the common law, except as herein provided, as his rights may at the time exist. Any suit brought by the workman for a recovery shall be held as an election to pursue such remedy exclusively.

SECTION 79. Any employer employing workmen to perform labor or services of other kinds than as defined in this chapter, and such workmen and employees may, by agreement, at any time during the employment, accept and adopt the provisions of this chapter as to

Sec. 15, id.

## Arizona

liability for accident, compensation, and the methods and means of paying and securing and enforcing the same. And in every such case the provisions of this chapter shall be taken in law and fact to bind the parties as fully as if they were specifically mentioned and embraced in the provisions of this chapter.

Sec. 16, id.

SECTION 80. This chapter is remedial in its purpose and shall be construed and applied so as to secure promptly and without burdensome expense to the workmen the compensation herein provided and apportioned so as to provide support during the periods named for the loss of ability to earn full wages.

Sec. 17, id.

SECTION 81. Nothing in this chapter shall be deemed or taken to repeal or affect in any way any other Acts or laws passed by the First Legislature of the State of Arizona, and in so far as it refers to the same subject in other acts it shall be deemed to be accumulative only.

SECTION 82. All acts and parts of acts in conflict with this act are hereby repealed.

SECTION 83. This Act shall take effect from and after the first day of October, 1913.

APPROVED BY GOVERNOR, May 13th, 1913.

## CALIFORNIA

The repealing clause (§ 90) of the Act of 1913 repeals only such portions of former Acts as are "inconsistent" therewith. It is held by the California Industrial Accident Board that some at least of the provisions of the Roseberry Act of 1911 are not inconsistent with the Act of 1913 and are therefore still in force. The Board has particularly declared that the portion of the Roseberry Act abolishing common-law defenses has not been abolished. The Roseberry Act, of 1911 is therefore appended to the Statute of 1913 on the pages which follow.

### (CHAPTER 176, LAWS OF 1913)

(In effect January 1, 1914)

AN ACT to promote the general welfare of the people of this state as affected by accident causing the injury or death of employees in the course of their employment, by creating a liability on the part of employers to compensate such employees and their dependents for such accidental injury or death irrespective of the fault of either party, and providing the means and methods of enforcing such liability; and creating a "state compensation insurance fund" to insure employers against such liability and providing for its administration and regulating such insurance by other insurance carriers; and requiring safety in all employments and places of employment in this state and providing the means and methods of enforcing such safety; and requiring reports of industrial accidents; and providing penalties for offenses by employers, their officers, agents, and by employees and other persons and corporations; and creating an industrial accident commission, providing for its organization, defining its powers and duties and providing for review of its orders, decisions and awards; and appropriating moneys to carry out the provisions of this act; and repealing all acts and parts of acts inconsistent with the provisions of this act.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known, and may be cited, as the "workmen's compensation, insurance and safety act" and shall apply to the subjects mentioned in its title.

SEC. 2. The following terms as used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

(1) The term "commission" means the industrial accident commission of the State of California.

(2) The term "commissioner" means one of the members of the commission.

(3) The term "compensation" means compensation under this act and includes every benefit or payment conferred by sections twelve to thirty-six, inclusive, of this act upon an injured employee, or in the event of his death, upon his dependents, without regard to negligence.

(4) The term "damages" means the recovery allowed in an action at law as contrasted with compensation under this act.

(5) The term "person" includes an individual, firm, voluntary association or a corporation.

(6) The term "insurance carrier" includes the state compensation insurance fund herein created and any private company, corporation or mutual association authorized under the laws of this state to insure employers against liability for compensation under this act.

(7) The phrase "compensation provisions of this act" means and includes sections twelve to thirty-five, inclusive, of this act.

(8) The phrase "safety provisions of this act" means and includes sections fifty-one to seventy-two, inclusive, of this act.

(9) Whenever in this act the singular is used the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

SEC. 3. There is hereby created a board to consist of three members who shall be appointed by the governor from the state at large and which shall be known as the "industrial accident commission" and shall have the powers, duties and functions hereinafter conferred. Within thirty days prior to the first day of January, 1914, the governor shall appoint the three members of

## California

said commission, one for the term of two years, one for the term of three years and one for the term of four years. Thereafter, the term of office of each commissioner shall be four years. Vacancies shall be filled by appointment in the same manner for the unexpired term. Each commissioner shall receive an annual salary of five thousand dollars. Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

SEC. 4. The commission shall organize by choosing one of its members as chairman. A majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power or authority of the commission. A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the power and authority of the commission. The act of the majority of the commission, when in session as a commission, shall be deemed to be the act of the commission, but any investigation, inquiry or hearing, which the commission has power to undertake or to hold, may be undertaken or held by or before any member thereof or any referee appointed by the commission for that purpose, and every finding, order, decision, or award made by any commissioner or referee, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission.

SEC. 5. The commission shall have a seal, bearing the following inscription: "Industrial accident commission State of California, seal." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

SEC. 6. The commission shall keep its principal office in the city and county of San Francisco, and shall also keep an office in the city of Los Angeles, and shall provide itself with suitable rooms, necessary office furniture, stationery and other supplies. For the purpose of holding sessions in other places, the commission shall have power to rent temporary quarters.

SEC. 7. The commission shall have full power and authority:

(1) To appoint as its attorney an attorney-at-law of this state, who shall hold office at the pleasure of the commission. It shall



be the right and the duty of the attorney to represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission and, if directed so to do by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute and expedite the final determination of all actions or proceedings, civil or criminal, directed or authorized by the commission; to advise the commission and each member thereof, when so requested, in regard to all matters in connection with the jurisdiction, powers or duties of the commission and members thereof; and generally to perform all duties and services as attorney to the commission which may be required of him.

(2) To appoint, and it shall appoint, a secretary, who shall hold office at the pleasure of the commission. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the commission, to issue all necessary processes, writs, warrants and notices which the commission is required or authorized to issue, and generally to perform such other duties as the commission may prescribe. The commission may also appoint such assistant secretaries as may be necessary and such assistant secretaries may perform any duty of the secretary, when so directed by the commission.

(3) To appoint a manager of the state compensation insurance fund who shall hold office at the pleasure of the commission. It shall be the duty of such manager to manage, supervise and conduct, subject to the general direction and approval of the commission, the business and affairs of the state compensation insurance fund and to perform such other duties as the commission may prescribe. Before entering on the duties of his office, he must give an official bond in the sum of \$50,000, and take and subscribe to an official oath. Said bond must be approved by the commission, by written endorsement thereon, and be filed in the office of the secretary of state.

(4) To appoint a superintendent of the department of safety, who shall hold office at the pleasure of the commission and who shall perform such duties as the commission shall prescribe.

(5) To employ such other assistants, officers, experts, statisticians, actuaries, accountants, inspectors, referees and other

## California

employees, as it may deem necessary to carry out the provisions of this act, or to perform the duties and exercise the powers conferred by law upon the commission.

SEC. 8. All officers and employees of the commission shall receive such compensation for their services as may be fixed by the commission and shall hold office at the pleasure of the commission and shall perform such duties as are imposed on them by law or by the commission. The salaries of the members of the commission, its attorney, secretary and assistant secretary, as fixed by law or the commission, shall be paid in the same manner as are the salaries of other state officers. The salary or compensation of every other person holding office or employment under the commission, as fixed by law or by the commission, shall be paid monthly, after being approved by the commission, upon claims therefor to be audited by the state board of control. All expenses incurred by the commission pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the commission, either within or without the state, shall, unless otherwise provided in this act, be paid from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control; *provided, however*, that no such expenses incurred outside of the State shall be allowed unless prior authorization therefor be obtained from the board of control.

SEC. 9. In all cases in which salaries, expenses or outgoings of one department under the jurisdiction of the commission are expended in whole or in part on behalf of another department the commission may apportion the same between such departments.

SEC. 10. The commission shall cause to be printed and furnished free of charge to any employer or employee, or other person, such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a book in which shall be entered the minutes of all its proceedings, a book in which shall be recorded all awards made by the commission and such other books or records as it shall deem requisite for the proper and efficient administration of this act; all such records to be kept in the office of the commission.

SEC. 11. The commission shall also have power and authority:

## California

(1) To charge and collect the following fees: for copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office or of the evidence taken on proceedings had, fifteen cents for each folio.

(2) To publish and distribute in its discretion from time to time, in addition to its annual report to the governor of the state, such further reports and pamphlets covering its operations, proceedings and matters relative to its work as it may deem advisable.

(3) To fix and collect reasonable charges for publications issued under its authority.

(4) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the "industrial accident fund" and shall be accompanied by a detailed statement thereof.

SEC. 12. (a) Liability for the compensation provided by this act, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury sustained by his employees by accident arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employee are subject to the compensation provisions of this act.

(2) Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment as such.

(3) Where the injury is proximately caused by accident, either with or without negligence, and is not so caused by the intoxication or the wilful misconduct of the injured employee.

(b) Where such conditions of compensation exist, the right to recover such compensation pursuant to the provisions of this act, shall be the exclusive remedy against the employer for the injury or death, except that when the injury was caused by the employer's gross negligence or wilful misconduct and such act or failure to act causing such injury was the personal act or failure to act on the part of the employer himself, or if the employer be a partnership on the part of one of the partners, or if a corporation, on the part of an elective officer or officers thereof, and such act or

failure to act indicated a wilful disregard of the life, limb, or bodily safety of employees, any such injured employee may, at his option, either claim compensation under this act or maintain an action at law for damages.

(c) In all other cases where the conditions of compensation do not concur, the liability of the employer shall be the same as if this act had not been passed.

SEC. 13. The term "employer" as used in sections twelve to thirty-five, inclusive, of this act shall be construed to mean: The state, and each county, city and county, city, school district and all public corporations therein, and every person, firm, voluntary association, and private corporation, (including any public service corporation) who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied, oral or written, and the legal representatives of any deceased employer.

SEC. 14. The term "employee" as used in sections twelve to thirty-five, inclusive, of this act shall be construed to mean: every person in the service of an employer as defined by section thirteen hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors, but excluding any person whose employment is both casual and not in the usual course of the trade, business, profession or occupation of his employer, and also excluding any employee engaged in farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising or in household domestic service.

SEC. 15. Where liability for compensation under this act exists such compensation shall be furnished or paid by the employer and be as provided in the following schedule:

(a) Such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, as may reasonably be required at the time of the injury and within ninety days thereafter, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same.

(b) 1. If the accident causes disability, a disability indemnity

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California

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which shall be payable for one week in advance as wages on the fifteenth day after the injured employee leaves work as a result of the injury, and thereafter on the employer's regular payday, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, subject, however, to the following limitations:

(1) If the period of disability does not last longer than two weeks from the day the employee leaves work, as the result of the injury, no disability indemnity whatever shall be recoverable.

(2) If the period of disability lasts longer than two weeks from the day the employee leaves work as the results of the injury, no disability indemnity shall be recoverable for the first two weeks of such disability.

2. The disability indemnity payable shall be as follows:

(1) If the accident causes temporary total disability, sixty-five per cent of the average weekly earnings during the period of such disability;

(2) If the accident causes temporary partial disability, sixty-five per cent of the weekly loss in wages during the period of such disability;

(3) If the temporary disability caused by the accident is at times total and at times partial, the weekly disability indemnity during the periods of each such total or partial disability shall be in accordance with paragraphs (1) and (2) of this subdivision respectively;

(4) Paragraphs (1), (2) and (3) of this subdivision shall be limited as follows: aggregate disability indemnity for a single injury causing temporary disability shall not exceed three times the average annual earnings of the employee, nor shall the aggregate disability period for such temporary disability in any event extend beyond two hundred forty weeks from the date of the accident.

(5) If the accident causes permanent disability, the percentage of disability to total disability shall be determined and the disability indemnity computed and allowed as follows: for a ten per cent disability, sixty-five per cent of the average weekly earnings for a period of forty weeks; for a twenty per cent disability, sixty-five per cent of the average weekly earnings for a period of eighty weeks; for a thirty per cent disability, sixty-five per cent of the

## California

average weekly earnings for a period of one hundred twenty weeks; for a forty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred sixty weeks; for a fifty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred weeks; for a sixty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks; for a seventy per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter ten per cent of such weekly earnings during the remainder of life; for an eighty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter twenty per cent of such weekly earnings during the remainder of life; for a ninety per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter thirty per cent of such weekly earnings during the remainder of life; for a hundred per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter forty per cent of such weekly earnings during the remainder of life.

(6) The indemnity for permanent disabilities intermediate to those fixed by the foregoing schedule shall be computed and allowed as follows: if under seventy per cent, sixty-five per cent of the average weekly earnings for four weeks for each one per cent of disability; if seventy per cent or over, sixty-five per cent of the average weekly earnings for two hundred forty weeks and thereafter one per cent of such weekly earnings for each one per cent of disability in excess of sixty per cent to be paid during the remainder of life.

(7) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee and his age at the time of such injury.

(8) Nothing contained in the foregoing schedule of permanent disability indemnity shall be held to limit the amount of compensation recoverable for any such permanent injury during any period of total incapacity due to illness resulting from that injury, but any sum so received shall be deducted from the compensation payable in accordance with the said schedule.

(9) The following permanent disabilities shall be conclusively presumed to be total in character: Loss of both eyes or the sight thereof; loss of both hands or the use thereof; an injury resulting in a practically total paralysis; an injury to the brain resulting in incurable imbecility or insanity. In all other cases, permanent total disability shall be determined in accordance with the fact.

3. The death of the injured employee shall not affect the liability of the employer under subsections (a) and (b) of this section, so far as such liability has accrued and become payable at the date of the death, and any accrued and unpaid compensation shall be paid to the dependents, if any, without administration, or if there are no dependents, to the personal representatives of the deceased employee or other person entitled thereto, but such death shall be deemed to be the termination of the disability.

(c) If the accident causes death, either with or without disability, a death benefit which shall be payable in installments equal to sixty-five per cent of the average weekly earnings of the deceased employee, upon the employer's regular pay-day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, which death benefit shall be as follows:

(1) In case the deceased employee leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient, when added to the disability indemnity which, at the time of death has accrued and become payable, under the provisions of subsection (b) hereof, to make the total disability indemnity and death benefit equal to three times his average annual earnings, such annual earnings to be taken at not less than three hundred and thirty-three dollars and thirty-three cents nor more than one thousand six hundred and sixty-six dollars and sixty-six cents.

(2) In case the deceased employee leaves no person wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employee as the annual amount devoted by the deceased to the support of the persons or person so partially dependent bears to such average annual earnings; *provided*, that the death benefit shall not be greater than a sum sufficient, when added to the disability indemnity which, at the time of the death, has accrued and become payable under the

## California

provisions of subsection (b) hereof to make the total disability indemnity and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred and thirty-three dollars and thirty-three cents nor more than one thousand six hundred and sixty-six dollars and sixty-six cents.

(3) If the deceased employee leaves no person dependent upon him for support, the death benefit shall consist of the reasonable expenses of his burial not exceeding one hundred dollars and such further death benefit as may be provided by law.

(d) Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor.

SEC. 16. (a) Unless compensation is paid or an agreement for its payment made within the time limited in this section for the institution of proceedings for its collection, the right to institute such proceedings shall be wholly barred.

(b) The periods within which proceedings for the collection of compensation may be commenced are as follows:

(1) Proceedings for the collection of the benefit provided by subsection (a) of section fifteen or for the collection of the disability indemnity provided by subsection (b) of said section fifteen must be commenced within six months from the date of the accident, except as otherwise provided in this act.

(2) Proceedings for the collection of the death benefit provided by subsection (c) of said section fifteen must be commenced within one year from the date of death, and in any event within two hundred forty weeks from the date of the accident, and can only be maintained when it appears that death ensued within one year from the date of the accident, or that the accident causing death also caused disability which continued to the date of the death and for which a disability indemnity was paid, or an agreement for its payment made, or proceedings for its collection commenced within the time limited for the commencement of proceedings for the recovery of the disability indemnity.

(c) The payment of the disability indemnity or death benefit, or any part thereof, or agreement therefor, shall have the effect of extending the period within which proceedings for its collection may be commenced, six months from the date of the agreement or



last payment of such disability indemnity or death benefit or any part thereof.

(d) If an injured employee, or in the case of his death, one or more of his dependents, shall be a minor or incompetent at any time when any right or privilege accrues to such person under the provisions of this act, a general guardian, appointed by the court or a guardian *ad litem* or trustee appointed by the commission or a commissioner may, on behalf of any such person, claim and exercise any such right or privilege with the same force and effect as if no such disability existed; and no limitation of time provided by this act shall run against any such minor or incompetent unless and until such guardian or trustee is appointed.

(e) No compensation shall be payable in respect of the death or disability of an employee if his death is caused, or if and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, the risk of which is, in the opinion of the commission, inconsiderable in view of the seriousness of the injury.

(f) The fact that an employee has suffered a previous disability, or receives compensation therefor, shall not preclude him from compensation for a later injury, or his dependents from compensation for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be fixed at such sum as will reasonably represent his annual earning capacity at the time of the later injury.

(g) Any payment, allowance or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this act was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be construed to be an admission of liability for compensation on the part of the employer, or the acceptance thereof as a waiver of any right or claim which the employee or his dependents may have against the employer, but any such payment, allowance or benefit may be taken into account by the commission in fixing the amount of the compensation to be paid.

SEC. 17. (a) The average weekly earnings referred to in section fifteen hereof shall be one fifty-second of the average annual earnings of the employé; in computing such earnings his average

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California

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annual earnings shall be taken at not less than three hundred and thirty-three dollars and thirty-three cents, nor at more than one thousand six hundred and sixty-six dollars and sixty-six cents and between said limits shall be arrived at as follows:

(1) If the injured employé has worked in the same employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily earnings, wage or salary which he earned as such employé during the days when so employed.

(2) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily earnings, wage or salary which an employé of the same class, working substantially the whole of such immediately preceding year, in the same or a similar kind of employment, in the same or a neighboring place, earned during the days when so employed.

(3) In every case where for any reason the foregoing methods of arriving at the average annual earnings of the injured employé cannot reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment, in the same or neighboring locality, shall reasonably represent the average annual earning capacity of the injured employé at the time of the injury in the kind of employment in which he was then working, or in any employment similar thereto.

(b) In determining such average weekly earnings, there shall be included the market value of board, lodging, fuel and other advantages received by the injured employé, as part of his remuneration and which can be estimated in money, but such average weekly earnings shall not include any sum which the employer paid to the injured employé to cover any special expenses entailed on him by the nature of his employment.

(c) If the injured employé is a minor, and his incapacity, whether total or partial, is permanent, his average weekly earnings shall be deemed, within the limits fixed, to be the weekly

sum, that under ordinary circumstances he would probably be able to earn after obtaining the age of twenty-one years, in the occupation in which he was employed at the time of the injury, if he had not been injured.

SEC. 18. The weekly loss in wages referred to in section fifteen hereof shall consist of the difference between the average weekly earnings of the injured employé, computed according to the provisions of said section, and the weekly amount which the injured employé, in the exercise of reasonable diligence, will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings due regard shall be had to the ability of the injured employé to compete in an open labor market.

SEC. 19. (a) The following shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

(1) A wife upon a husband with whom she was living at the time of his death.

(2) A husband upon a wife upon whose earning he is partially or wholly dependent at the time of her death.

(3) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he or they are living at the time of the death of such parent or for whose maintenance such parent was legally liable at the time of his death, there being no surviving dependent parent.

(b) In all other cases, questions of entire or partial dependency and questions as to who constitute dependents and the extent of their dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employé.

(c) No person shall be considered a dependent of any deceased employé unless a member of the family of such employé or unless such person bears to such employé the relation of husband or wife, child, adopted child or stepchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, nephew or niece.

(d) 1. If there is one or more persons wholly dependent for support upon a deceased employé, such person or persons shall receive the entire death benefit, and any person or persons par-

tially dependent shall receive no part thereof, unless otherwise ordered by the commission.

2. If there is more than one such person wholly dependent for support upon a deceased employé, the death benefit shall be divided equally among them, unless otherwise ordered by the commission.

3. If there is more than one person partially dependent for support upon a deceased employé, and no person wholly dependent for support, the amount allowed as the death benefit shall be divided among the persons so partially dependent in proportion to the relative extent of their dependency, unless otherwise ordered by the commission.

(e) The death benefits shall be paid to such one or more of the dependents of the deceased, or to a trustee appointed by the commission, or a commissioner, for the benefit of the person or persons entitled, as may be determined by the commission, and the commission may, anything in this act contained to the contrary notwithstanding, apportion such benefits among the dependents in proportion to their respective needs and as may be just and equitable, and may order payment to a dependent subsequent in right, or not otherwise entitled, upon good cause being shown therefor. The person to whom the death benefit is paid for the use of the several beneficiaries shall apply the same in compliance with the findings and directions of the commission.

SEC. 20. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer; *provided, however*, that actual knowledge of such accident and injury on the part of such employer, or his managing agent or superintendent in charge of the work, upon which the injured employé was engaged at the time of the injury, shall be equivalent to such service; *and provided, further*, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for the

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California

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collection of the claim that there was no intention to mislead or prejudice the employer, and that he was not in fact misled or prejudiced thereby.

SEC. 21. (a) Whenever in case of injury the right to compensation under this act would exist in favor of any employé, he shall, upon the written request of his employer, submit from time to time to examination by a practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any physician selected by the commission or any member or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employé and his physical condition and ability to attend at the time and place fixed. The employé shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employé, after such written request of the employer, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall fail or refuse to submit to such examination after direction by the commission, or any member or referee thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such failure, refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

SEC. 22. Upon filing with the commission by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation, or concerning any right of liability arising out of, or incident thereto, jurisdiction over which is vested by this act in the commission, a time and place shall be fixed for the hearing thereof, which shall be not less than ten days nor more than forty days after the filing of such application. The person filing such application shall be known as the applicant and the adverse party shall be known as the defendant. A copy of said application, together with a notice of the time and place of hearing thereof, shall forthwith be served upon all adverse parties and may be served either as a summons in a civil action or in the same manner as any other notice that is au-

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California

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thorized or required to be served under the provisions of this act. A notice of the time and place of hearing shall also be served upon the applicant.

SEC. 23. If any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete, or desires to bring any fact, paper or document to the attention of the commission as a defense to the claim, or otherwise, he must within five days after the service of the application upon him, file with or mail to the commission his answer setting forth the particulars in which the application is inaccurate or incomplete, and the facts upon which he intends to rely. A copy of such answer must be forthwith served upon all adverse parties.

SEC. 24. (a) No pleadings, other than the application and answer, shall be required. The hearing on the application may be adjourned from time to time and from place to place in the discretion of the commission. Either party shall have the right to be present at any hearing, in person or by attorney or by any other agent, and to present such testimony as shall be pertinent under the pleadings, but the commission may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the time-books and pay roll of the employer to be examined by any commissioner or any referee appointed by the commission, and may from time to time direct any employé claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination to be reported to the commission for its consideration.

(b) The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the commission. The commission may thereupon make its findings and award based upon such stipulation, or may in its discretion set the matter down for hearing and take such further testimony or make such further investigations as may be necessary to enable it to completely determine the matter in controversy.

SEC. 25. (a) After final hearing by the commission, it shall, within thirty days, make and file (1) its findings upon all facts involved in the controversy and (2) its award which shall state its determination as to the rights of the parties.

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California

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(b) The commission in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid and order payment thereof during the continuance of such disability.

(c) If, in any proceeding under sections twelve to thirty-five, inclusive, of this act, it is proved that an accident has happened for which the employer would be liable to pay compensation if disability had resulted therefrom, but it is not proved that any incapacity had resulted, the commission may, instead of dismissing the application, award a nominal disability indemnity, if it appears that disability is likely to result at a future time.

(d) The commission shall have continuing jurisdiction over all its orders, decisions and awards made and entered under the provisions of sections twelve to thirty-five, inclusive, of this act and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision or award made by it upon good cause appearing therefor; *provided*, that no award of compensation shall be rescinded, altered or amended after two hundred forty-five weeks from the date of the accident. Any order, decision or award rescinding, altering or amending a prior order, decision or award shall have the same effect as is herein provided for original orders, decisions or awards.

SEC. 26. (a) Any party affected thereby may file a certified copy of the findings and award of the commission with the clerk of the superior court for any county, or city and county, and judgment must be entered by the clerk in conformity therewith immediately upon the filing of such findings and award.

(b) The certified copy of the findings and award of the commission and a copy of the judgment shall constitute the judgment roll. The pleadings, all orders of the commission, its original findings and award, and all other papers or documents filed in the cause shall remain on file in the office of the commission.

(c) The commission, or any member thereof, may stay the execution of any judgment entered upon an award of the commission, upon good cause appearing therefor and upon such terms and conditions as may be imposed. A certified copy of such order shall be filed with the clerk entering such judgment.

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California

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(d) Satisfaction of a judgment entered upon the award of the commission may be entered in the manner provided by law for the satisfaction of judgment. When a judgment is satisfied in fact, otherwise than upon an execution, the commission may, upon motion of either party or of its own motion, order the entry of satisfaction of the judgment to be made, and upon filing a certified copy of such order with the said clerk, he shall thereupon enter such satisfaction.

SEC. 27. The orders, findings, decisions or awards of the commission made and entered under sections twelve to thirty-five, inclusive, of this act may be reviewed by the courts specified in sections eighty-four and eighty-five hereof and within the time and in the manner therein specified and not otherwise.

SEC. 28. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this act before the commission, costs as between the parties shall be allowed or not in the discretion of the commission, and the commission may in its discretion, where payments of compensation have been unreasonably delayed, allow the beneficiary thereof interest thereon, at not to exceed one and one-half per cent per month, during such period of delay.

SEC. 29. (a) No claim for compensation shall be assignable before payment, but this provision shall not affect the survival thereof, nor shall any claim for compensation or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled to such compensation, except as hereinafter provided.

(b) The commission may fix and determine and allow as a lien against any amount to be paid as compensation:

(1) A reasonable attorney's fee for legal services pertaining to any claim for compensation or application filed therefor and the reasonable disbursements in connection therewith.

(2) The reasonable expense incurred by or on behalf of the injured employé and for which the employer is liable under the provisions of subsection (a) of section fifteen hereof.

(3) The reasonable burial expenses of the deceased employé, not to exceed the sum of one hundred dollars.



## California

(c) If notice in writing be given to the employer setting forth the nature and extent of any claim, that may be allowed as a lien, the said claim shall be a lien against any amount thereafter to be paid as compensation, subject to the determination of the amount and approval thereof by the commission. The commission may, in its discretion, order the amount of such claim as fixed and allowed by it paid directly to the person entitled, either in a lump sum or in installments.

(d) No claim or agreement for the legal services or disbursements mentioned in paragraph (1) of subsection (b) hereof, or for the expense mentioned in paragraph (2) of said subsection (b), in excess of a reasonable amount, shall be valid or binding in any respect.

(e) A claim for compensation for the injury or death of any employé, or any award or judgment entered thereon, shall have the same preference over the other unsecured debts of the employer as is given by law to claims for wages. Such preference shall be for the entire amount of compensation to be paid, but this section shall not impair the lien of any previous award.

SEC. 30. The liability of principals and contractors for compensation under this act, when other than the immediate employer of the injured employé, shall be as follows:

(a) The principal, any general contractor and each intermediate contractor who undertakes to do, or contracts with another to do, or to have done, any work, shall be liable to pay to any employé injured while engaged in the execution of such work, or to his dependents in the event of his death, any compensation which the immediate employer is liable to pay.

(b) The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, and in addition thereto the right to enforce in his own name, in the manner provided by this act, the liability for compensation imposed upon other persons by this section, either by making such other persons parties to the original application or by filing a separate application; *provided, however*, that payment in whole or in part of such compensation by either the immediate employer or other person shall, to the extent of such payment, be a bar to recovery against the other by any person entitled to such compensation.

## California

(c) When any person, other than the immediate employer, shall have paid any compensation for which he would not have been liable independently of this section, he shall, unless he caused the injury, be entitled to recover the full amount so paid from the person primarily liable therefor.

(d) The liability imposed by this section upon such principal, general contractor and intermediate contractor shall be subject to the following limitations:

(1) Such liability shall exist only in cases where the injury occurred on or in or about the premises on which the principal, general contractor or intermediate contractor has undertaken to execute any work, or when such premises or work are otherwise under his control or management.

(2) Such liability shall not exist in the event that the immediate employer, or other person primarily liable for the compensation shall, previous to the happening of such accident, have taken out, and maintained in full force and effect, compensation insurance with any insurance carrier, covering his full liability for compensation to the injured person or his dependents.

(3) The commission may, in its discretion, order that execution against the principal, general contractor and any intermediate contractor, be stayed until execution against the immediate employer shall be returned unsatisfied.

SEC. 31. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment to the employer of any right to recover damages which the injured employé, or his personal representative, or other person, may have against any other party for such injury or death, and such employer shall be subrogated to any such right and may enforce in his own name the legal liability of such other party. The amount of compensation paid by the employer, or the amount of compensation to which the injured employé or his dependents is entitled, shall not be admissible in evidence in any action brought to recover damages, but any amount collected by the employer, under the provisions of this section, in excess of the amount paid by the employer, or for which he is liable, shall be held by him for the benefit of the injured employé or other person entitled.

SEC. 32. (a) No contract, rule or regulation shall exempt the

## California

employer from liability for the compensation fixed by this act, but nothing in this act contained shall be construed as impairing the right of the parties interested to settle, subject to the provisions herein contained, any liability which may be claimed to exist under this act on account of such injury or death, or as conferring upon the dependents of any injured employé any interest which such employé may not divert by such settlement or for which he, or his estate, shall, in the event of such settlement by him, be accountable to such dependents or any of them.

(b) The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employés in his employment when subject to the provisions of this act, and no release of liability or settlement agreement shall be valid unless it provides for the payment of full compensation in accordance with the provisions of this act or until and unless it shall be approved by the commission.

(c) A copy of any such release or settlement agreement signed by both parties shall forthwith be filed with the commission. When such release or settlement agreement is filed with the commission and approved by it, the commission may of its own motion, or on the application of either party, without notice, enter its award based upon such release or settlement agreement.

(d) Every such release or settlement agreement shall be in writing, duly executed and attested by two disinterested witnesses, and shall specify the date of the accident, the average weekly wages of the employé, determined according to section seventeen hereof, the nature of the disability, whether total or partial, permanent or temporary, the amount paid or due and unpaid to the employé up to the date of the release or agreement or death, as the case may be, and, if any, the amount of the payment or benefits then or thereafter to be made, and the length of time that such payment is to continue. In case of death there shall also be stated in such release or settlement agreement the date of death, the name of the widow, if any, the name and ages of all children, if any, and the names of all other dependents, if any, and whether such dependents be total or partial, and the amount paid or to be paid as a death benefit and to whom such payment is to made.

SEC. 33. (a) At the time of making its award or at any time thereafter the commission on its own motion, either with or with-

out notice, or upon application of either party with due notice to the other, may in its discretion, commute the compensation payable under this act to a lump sum, if it appears that such commutation is necessary for the protection of the person entitled thereto, or for the best interest of either party, or that it will avoid undue expense or hardship to either party, or that the employer has sold or otherwise disposed of the greater part of his assets, or is about to do so, or that the employer is not a resident of this state, and the commission may order such compensation paid forthwith or at some future time.

(b) The amount of the commuted payment shall be determined in accordance with the following provisions:

(1) If the accident causes temporary disability, the commission shall estimate the probable duration thereof and the probable amount of the temporary disability indemnity payable therefor in accordance with the provisions of section fifteen hereof and shall fix the lump sum payment at such amount so determined.

(2) If the accident causes permanent disability or death, the commission shall fix the total amount of the permanent disability indemnity or death benefit payable therefor in accordance with the provisions of said section fifteen and shall estimate the present value thereof, assuming interest at the rate of six per cent per annum, disregarding the probability of the beneficiary's death in all cases except where the percentage of permanent disability is such as to entitle the beneficiary to a life-pension, and then taking into consideration the probability of the beneficiary's death only in estimating the present value of such life-pension.

(c) The commission in its discretion may order the lump sum payment, determined as hereinbefore provided, paid directly to the injured employé or to his dependents, or deposited with any savings bank or trust company authorized to transact business in this state, that will agree to accept the same as a deposit bearing interest at not less than four per cent, per annum, or the commission may order the same deposited with the state compensation insurance fund. Any such amount so deposited, together with all interest thereon, shall thereafter be held in trust for the injured employé, or in the event of his death, for his dependents, who shall have no further recourse against the employer. Payments from said fund, when so deposited, shall be made by the trustee

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California

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only in the same amounts and at the same times as fixed by the order of the commission and until said fund and interest thereon shall be exhausted. In the appointment of the trustee preference shall be given, in the discretion of the commission, to the choice of the injured employé or his dependents. Upon the making of such payment, the employer shall present to the commission a proper receipt evidencing the same, executed either by the injured employé or his dependents, or by the trustee, and the commission shall thereupon issue its certificate in proper form evidencing the same, and such certificate, upon filing with the clerk of the superior court in which any judgment upon an award may have been entered, shall operate as a satisfaction of said award and shall fully discharge the employer from any further liability on account thereof.

SEC. 34. (a) Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or the right of the employer to insure in mutual or other companies, in whole or in part, against liability for the compensation provided for by this act; or, to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their families, dependents or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act.

(b) Liability for compensation shall not be reduced or affected by any insurance, contribution, or other benefit whatsoever due to or received by the person entitled to such compensation, except as otherwise provided by this act, and the person so entitled shall, irrespective of any insurance or other contract, except as otherwise provided in this act, have the right to recover such compensation directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, either by making the insurance carrier a party to the original application or by filing a separate application, the liability of any insurance carrier, which may, in whole or in part, have insured against liability for such compensation; *provided, however*, that payment in whole or in part of such compensation by either the employer or the insurance company shall, to the extent thereof, be a bar to recovery against the other of the amount so paid; *and provided, further*, that as between the employer and the insurance

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California

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company, payment by either directly to the employé, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

(c) Every contract insuring against liability for compensation, or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employé and, in the event of his death, to his dependents, to pay the compensation, if any, for which the employer is liable; that, as between the employé and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer under the provisions of this act.

(d) Such policy must also provide that the employé shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employé or his dependents, the said insurance carrier may and shall pay the same directly to the said employé or his dependents, thereby discharging to the extent of such payment the obligations of the employer to the employé, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

(e) 1. If the employer shall be insured against liability for compensation with any insurance carrier, and if after the happening of any accident such insurance carrier shall serve or cause to be served upon any person claiming compensation against such employer a notice that it has assumed and agreed to pay the compensation, if any, for which the employer is liable, and shall file a copy of such notice with the commission, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, without notice, be sub-

stituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution but shall be continued against such insurance carrier.

2. If at the time of the happening of an accident for which compensation is claimed, or may be claimed, the employer shall be insured against liability for the full amount of compensation payable, or that may become payable, the employer may serve or cause to be served upon any person claiming compensation on account of the happening of such accident and upon the insurance carrier a notice that the insurance carrier has, in its policy contract or otherwise, assumed and agreed to pay the compensation, if any, for which the employer is liable, and may file a copy of such notice with the commission. If it shall thereafter appear to the satisfaction of the commission that the insurance carrier has, through the issuance of its contract of insurance or otherwise, assumed such liability for compensation, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, after notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution, but shall be continued against such insurance carrier.

(f) Where any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have paid any compensation for which the employer was liable, or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the employer and may enforce any such rights in its own name.

SEC. 35. (a) If any insurance policy shall be issued covering liability for compensation, which policy shall contain any limitation as to the compensation payable, such limitation shall be printed in the body of such policy in boldface type and in addition thereto the words "limited compensation policy" shall be printed on the top of the policy in boldfaced type not less than eighteen point in size.

(b) No insurance carrier shall insure against the liability of

## California

the employer for damages recoverable at law by the injured employé under the optional provisions contained in section twelve hereof, and any insurance carrier liable to any such injured employé for compensation upon the payment of the same shall have the same option given by said section twelve to such employé and shall be fully subrogated to his rights, and may enforce such liability for damages against the employer in its own name, anything in the insurance contract to the contrary notwithstanding.

SEC. 36. There is hereby created and established a fund to be known as the "state compensation insurance fund," to be administered by the industrial accident commission of the state, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under this act and insuring to employés and other persons the compensation fixed by this act for employés and their dependents.

SEC. 37. (a) The state compensation insurance fund shall be a revolving fund and shall consist of such specific appropriations as the legislature may from time to time make or set aside for the use of such fund, all premiums received and paid into the said fund for compensation insurance issued, all property and securities acquired by and through the use of moneys belonging to said fund and all interest earned upon moneys belonging to said fund and deposited or invested, as herein provided.

(b) Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of the salaries and other expenses to be charged against said fund in accordance with the provisions contained in this act.

(c) Said fund shall, after a reasonable time during which it may establish a business, be fairly competitive with other insurance carriers, and it is the intent of the legislature that said fund shall ultimately become neither more nor less than self-supporting.

SEC. 38. (a) The commission is hereby vested with full power, authority and jurisdiction over the state compensation insurance fund and may do and perform any and all things whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction over said fund in the administration thereof, or in connection with the insurance business to be carried on by it under the pro-



visions of this act, as fully and completely as the governing body of a private insurance carrier might or could do.

(b) The commission shall have full power and authority, and it shall be its duty, to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and affairs shall be conducted in the name of the state compensation insurance fund, and in that name, without any other name or title, the commission may:

(1) Sue and be sued in all the courts of the state in all actions arising out of any act, deed, matter or thing made, omitted, entered into, done, or suffered in connection with the state compensation insurance fund, the administration, management or conduct of the business or affairs relating thereto.

(2) Make and enter into contracts of insurance as herein provided, and such other contracts or obligations relating to the state compensation insurance fund as are authorized or permitted under the provisions of this act.

(3) Invest and reinvest the moneys belonging to said fund as hereinafter provided.

(4) Conduct all business and affairs, relating to the state compensation insurance fund, whether herein specifically designated or in addition thereto.

(c) The commission may delegate to the manager of the state compensation insurance fund, or to any other officer, under such rules and regulations and subject to such conditions as it may from time to time prescribe, any of the powers, functions or duties, conferred or imposed on the commission under the provisions of this act in connection with the state compensation insurance fund, the administration, management and conduct of the business and affairs relating thereto, and the officer or officers to whom such delegation is made may exercise the powers and functions and perform the duties delegated with the same force and effect as the commission, but subject to its approval.

(d) The commission shall not, nor shall any commissioner, officer or employé thereof, be personally liable in his private capacity for or on account of any act performed or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud, in connection with the

administration, management or conduct of the state compensation insurance fund, its business or other affairs relating thereto.

SEC. 39. In conducting the business and affairs of the state compensation insurance fund, the manager of the said fund or other officer to whom such power and authority may be delegated by the commission, as provided by subsection (c) of section thirty-eight thereof, shall have full power and authority:

(1) To enter into contracts of insurance, insuring employers against liability for compensation and insuring to employes and other persons the compensation fixed by this act.

(2) To sell annuities covering compensation benefits.

(3) To decline to insure any risk in which the minimum requirements of the commission with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the state compensation insurance fund, but shall not have power or authority, except as otherwise provided in this subdivision, to refuse to insure any compensation risk tendered with the premium therefor.

(4) To reinsure any risk or any part thereof.

(5) To inspect and audit, or cause to be inspected and audited the pay rolls of employers applying for insurance against liability for compensation.

(6) To make rules and regulations for the settlement of claims against said fund and to determine to whom and through whom the payments of compensation are to be made.

(7) To contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund.

SEC. 40. (a) It shall be the duty of the commission to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance coverage as herein provided, and such rates shall be fixed with due regard to the physical hazards of each industry, occupation or employment and, within each class, so far as practicable, in accordance with the elements of bodily risk or safety or other hazard of the plant or premises or work of each insured and the manner in which the same is conducted, together with a reasonable regard for the accident experience and history of each such insured, and the means and methods of caring for injured persons, but such rates shall take no account

of the extent to which the employ  s in any particular establishment have or have not persons dependent upon them for support.

(b) The rates so made shall be that percentage of the payroll of any employer which, in the long run and on the average, shall produce a sufficient sum, when invested at three and one half per cent interest:

(1) To carry all claims to maturity; that is to say the rates shall be based upon the "reserve" and not upon the "assessment" plan;

(2) To meet the reasonable expenses of conducting the business of such insurance;

(3) To produce a reasonable surplus to cover the catastrophe hazard.

SEC. 41. The insurance contracts entered into between the state compensation insurance fund and persons insuring therewith may be either limited or unlimited and issued for one year or, in the form of stamps or tickets or otherwise, for one month or any number of months less than one year, or for one day or any number of days less than one month, or during the performance of any particular work, job or contract; *provided*, that the rates charged shall be proportionately greater for a shorter than for a longer period and that a minimum premium charge shall be fixed in accordance with a reasonable rate for insuring one person for one day. Nothing in this act shall be construed to prevent any person applying for compensation insurance from being covered temporarily until the application is finally acted upon, or to prevent the insured from surrendering any policy at any time and having returned to him the difference between the premium paid and the premium at the customary short term for the shorter period which such policy has already run. The state compensation insurance fund may at any time cancel any policy, after due notice, upon a *pro rata* basis of premium repayment.

SEC. 42. The state compensation insurance fund may issue policies, including with their employ  s, employers who perform labor incidental to their occupations, and including also members of the families of such employers engaged in the same occupation, such policies insuring to such employers and working members of their families the same compensations provided for their employ  s, and at the same rates; *provided*, that the estimations of

## California

their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their payrolls upon which their premium is computed. Such policies may likewise be sold to self-employing persons and to casual employ  s, who, for the purpose of such insurance, shall be deemed to be employ  s within the meaning of sections twelve to thirty-five, inclusive, of this act.

SEC. 43. The treasurer of the state shall be custodian of all moneys and securities belonging to the state compensation insurance fund, except as otherwise provided in this act, and shall be liable on his official bond for the safe-keeping thereof. All moneys belonging to said fund collected or received by the commission, or the manager of the state compensation insurance fund, under and by virtue of the provisions of this act, shall be delivered to the treasurer of the state or may be deposited to his credit in such bank or banks throughout the state as he may, from time to time, designate, and such moneys when so delivered or deposited shall be credited by the treasurer to the said fund and no moneys received or collected on account of such fund shall be expended or paid out of such fund without first passing into the state treasury and being drawn therefrom as provided in this act. In like manner there shall be delivered to the treasurer all securities belonging to said fund which shall be held by him until otherwise disposed of as provided in this act.

SEC. 44. (a) The commission shall submit each month to the state board of control an estimate of the amount necessary to meet the current disbursements from the state compensation insurance fund during each succeeding calendar month and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on said fund in favor of said commission for such amount, and the treasurer is authorized and directed to pay the same.

(b) At the end of each calendar month the commission shall account to the state board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

(c) During the months of January and of July of each year the state board of control or the commission shall cause a valuation to be made of the properties and securities which have been acquired and which are held for said fund, and shall report the results of the same to the state controller, whose duty it shall be

to keep a special ledger account showing all of the assets pertaining to the state compensation insurance fund. In the controller's general ledger this fund account may be carried merely as a cash account, like other accounts of funds in the state treasury, and therein only the actual cash coming into the state compensation insurance fund shall be credited to such fund.

SEC. 45. (a) The commission shall cause all moneys in the state compensation insurance fund, in excess of current requirements, to be invested and reinvested, from time to time, in the securities now or hereafter authorized by law for the investment of funds of savings banks.

(b) The commission shall, from time to time, submit to the state board of control an estimate of the amount required by it for investment, which estimate shall be accompanied by a full description of the kind and character of the investments to be made and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on the state compensation insurance fund in favor of the commission for such amount and the treasurer is authorized and directed to pay the same.

(c) At the end of each calendar month the commission shall account to the said board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

(d) All moneys in said fund, in excess of current requirements and not otherwise invested, may be deposited by the state treasurer from time to time in the banks authorized by law to receive deposits of public moneys under the same rules and regulations that govern the deposit of other public funds and the interest accruing thereon shall be credited to the state compensation insurance fund.

SEC. 46. Each county, city and county, city, school district or other public corporation within the state, may insure against its liability for compensation, with the state compensation insurance fund and not with any other insurance carrier unless such fund shall refuse to accept the risk when the application for insurance is made, and the premium therefor shall be a proper charge against the general fund of each such political subdivision of the state.

SEC. 47. When the premium rates for insurance in the state compensation insurance fund shall have been established the com-

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California

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mission shall furnish schedules of rates and copies of the forms of policy to the commissioner of labor, to the clerk and to the treasurer of every county, city and county, and city in the state, and it shall be the duty of every public officer to whom the foregoing may be furnished to fill out and transmit to the manager of the state compensation insurance fund applications for compensation insurance in such fund and to receive and transmit to said manager all premiums paid on account of any policy issued or applied for.

SEC. 48. The commission shall each quarter make to the governor of the state, reports of the business done by the state compensation insurance fund during the previous quarter, and a statement of the fund's resources and liabilities, and it shall be the duty of the state board of control to audit such reports and to cause an abstract thereof to be published one or more times in at least two newspapers of general circulation in the state. The commission shall likewise make to the state insurance commissioner all reports required by law to be made by other insurance carriers.

SEC. 49. Any employer who shall wilfully misrepresent the amount of the payroll upon which his premium under this act is to be based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid had his payroll been correctly computed, and the liability to the state under this section shall be enforced in a civil action in the name of the state compensation insurance fund and any amount so collected shall become a part of said fund.

SEC. 50. Any person who wilfully misrepresents any fact in order to obtain insurance at less than the proper rate for such insurance, or in order to obtain any payments out of such fund, shall be guilty of a misdemeanor.

SEC. 51. The following terms, as used in sections fifty-one to seventy-two, inclusive, of this act, shall, unless a different meaning is plainly required by the context, be construed as follows:

(1) The phrase "place of employment" shall mean and include every place, whether indoors or out or underground, or elsewhere, and the premises appurtenant thereto, where, either temporarily or permanently, any industry, trade, work or business is carried on, or where any process or operation directly or indirectly related to

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California

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any industry, trade, work or business, is carried on, and where any person is directly or indirectly employed by another for direct or indirect gain or profit, but shall not include any place where persons are employed solely in farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising or in household domestic service.

(2) The term "employment" shall mean and include any trade, work, business, occupation or process of manufacture, or any method of carrying on such trade, work, business, occupation or process of manufacture in which any person may be engaged, except where persons are employed solely in farm, dairy, agricultural, viticultural or horticultural labor, in poultry or stock raising or in household domestic services.

(3) The term "employer" shall mean and include every person, firm, voluntary association, corporation, officer, agent, manager, representative or other person having control or custody of any employment, place of employment or of any employé.

(4) The term "employee" shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to work or be at any time in any place of employment.

(5) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission or any other determination arrived at or decision made by such commission under the safety provisions of this act.

(6) The term "general order" shall mean and include such order made, under the safety provisions of this act, as applies generally throughout the state to all persons, employments or places of employment, or all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(7) The term "local order" shall mean and include any ordinance, order, rule or determination of any board of supervisors, city council, board of trustees or other governing body of any county, city and county, city or of any school district or other public corporation, or an order or direction of any other public official or board or department upon any matter over which the industrial accident commission has jurisdiction.

## California

(8) The terms "safe" and "safety" as applied to an employment or a place of employment shall mean such freedom from danger to the life or safety of employés as the nature of the employment will reasonably permit.

(9) The terms "safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

SEC. 52. Every employer shall furnish employment which shall be safe for the employés therein and shall furnish a place of employment which shall be safe for employés therein, and shall furnish and use such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of such employés.

SEC. 53. No employer shall require, permit or suffer any employé to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employés, and no such employer shall occupy or maintain any place of employment that is not safe.

SEC. 54. No employer, owner or lessee of any real property in this state shall construct or cause to be constructed any place of employment that is not safe.

SEC. 55. No employé shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employé in such employment, or place of employment, or fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employés.

SEC. 56. The commission is vested with full power and jurisdiction over, and shall have such supervision of, every employ-



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California

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ment and place of employment in this State as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employé in such employment or place of employment.

SEC. 57. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise:

(1) To declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employés of every employment and place of employment safe as required by law or lawful order.

(2) To fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of employés in employments and places of employment.

(3) To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

(4) To require the performance of any other act which the protection of the life and safety of employés in employments and places of employment may demand.

(5) To declare and prescribe the general form of industrial accidents reports, the accidents to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the commission from requiring supplemental accident reports.

SEC. 58. Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders as authorized by section fifty-seven hereof, the commission shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation published and circulated in the city and county of San Francisco, and also in one or more daily newspapers of general circulation published and circulated in the county of Los Angeles, such news-

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California

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papers to be designated by the commission for that purpose. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the commission after hearing had.

SEC. 59. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any employment or place of employment is not safe or that the practices or means or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employ  s in such employments and places of employment, the commission shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employ  s in such employments and places of employment and may in said order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe, in the manner and within the time specified in said order.

SEC. 60. The commission may, upon application of any employer, or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the commission for an extension of time, which the commission shall grant if it finds such an extension of time necessary.

SEC. 61. Whenever the commission shall learn or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employ   it may, of its own motion, or upon complaint, summarily investigate the same, with or without notice or hearings, and after a hearing upon such notice as it may prescribe, the commission may enter and serve such order as may be necessary relative thereto, anything in this act to the contrary notwithstanding.

SEC. 62. Every employer, employ   and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in connection with the matters herein specified, or in any way relating to or affecting safety of employments or places of employment, or to protect the life and safety of employ  s in such

## California

employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation.

SEC. 63. The orders of the commission, general or special, its rules or regulations, findings and decisions, made and entered under the safety provisions of this act, may be reviewed by the courts specified in sections eighty-four and eighty-five of this act and within the time and in the manner therein specified and not otherwise.

SEC. 64. Nothing contained in this act shall be construed to deprive the board of supervisors of any county, or city and county, the board of trustees of any city, or any other public corporation or board or department, of any power or jurisdiction over or relative to any place of employment; *provided*, that whenever the commission shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the commission of a copy thereof with the clerk of the county, city and county, or city to which it may apply, establish a minimum requirement concerning the matters covered by such order and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the commission.

SEC. 65. The commission shall have further power and authority:

(1) To establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of the life and safety of employes, and to publish and distribute bulletins on any phase of this general subject.

(2) To cause lectures to be delivered, illustrated by stereopticon or other views, diagrams or pictures, for the information of employers and their employes and the general public in regard to the causes and prevention of industrial accidents, occupational diseases and related subjects.

(3) To appoint advisers who shall, without compensation, assist the commission in establishing standards of safety and the commission may adopt and incorporate in its general orders such safety recommendations as it may receive from such advisers.

SEC. 66. Every order of the commission, general or special, its rules and regulations, findings and decisions, made and entered

## California

under the safety provisions of this act shall be admissible as evidence in any prosecution for the violation of any of the said provisions and shall, in every such prosecution, be conclusively presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety, unless, prior to the institution of the prosecution for such violation or violations, proceedings for a rehearing thereon or a review thereof shall have been instituted as provided in sections eighty-one to eighty-five, inclusive, of this act and not then finally determined.

SEC. 67. Every employer, employé or other person who, either individually or acting as an officer, agent or employé of a corporation or other person, violates any safety provision contained in sections fifty-two, fifty-three, fifty-four or fifty-five of this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who, directly or indirectly, knowingly induces another so to do is guilty of a misdemeanor. In any prosecution under this section it shall be deemed *prima facie* evidence of a violation of any such safety provision, that the accused has failed or refused to comply with any order, rule, regulation or requirement of the commission relative thereto and the burden of proof shall thereupon rest upon the accused to show that he has complied with such safety provision.

SEC. 68. Every violation of the provisions contained in sections fifty-two, fifty-three, fifty-four, or fifty-five, of this act, or any part or portion thereof, by any person or corporation is a separate and distinct offense, and, in the case of a continuing violation thereof, each day's continuance thereof shall constitute a separate and distinct offense.

SEC. 69. All fines imposed and collected under prosecutions for violations of the provisions of sections fifty-one to seventy-two inclusive of this act, shall be paid into the State treasury to the credit of the "accident prevention fund," which fund is hereby created.

SEC. 70. It shall be unlawful for any member of the commission, or for any officer or employé of the commission, to divulge to any person not connected with the administration of this act any confidential information obtained from any person, concerning the failure of any other person to keep any place of employment safe, or concerning the violation of any order, rule or regulation issued

by the commission. Any member of the commission or any officer or employé of the commission divulging such confidential information shall be guilty of a misdemeanor.

SEC. 71. (a) Every employer of labor, and every insurance carrier, is hereby required to file with the commission, under such rules and regulations as the commission may from time to time make, a full and complete report of every accident to an employé arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the commission in such form and such detail as the commission shall from time to time prescribe, and shall make specific answers to all questions required by the commission under its rules and regulations. Any such employer or insurance carrier who shall furnish such report shall be exempt from furnishing any similar report or reports authorized or required under the laws of this state.

(b) Every employer or insurance carrier receiving from the commission any blanks with directions to fill out the same shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case he is unable to answer any such questions a good and sufficient reason shall be given for such failure.

(c) No information furnished to the commission by an employer or an insurance carrier shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employé of the commission who, in violation of the provisions of this subsection, divulges any information shall be guilty of a misdemeanor.

SEC. 72. (a) The commission shall investigate the cause of all industrial accidents occurring within the state in any employment or place of employment, or directly or indirectly arising from or connected with the maintenance or operation of such employment or place of employment, resulting in personal injury or death and requiring, in the judgment of the commission, such investigation; and the commission shall have the power to make such orders or recommendations with respect to such accidents as may be just and reasonable, provided that neither the order nor the recommendation of the commission, nor any accident report filed

## California

with the commission, shall be admitted as evidence in any action for damages or any proceeding to recover compensation, based on or arising out of such injury or death.

(b) For the purpose of making any investigation which the commission is authorized to make under the provisions of this section, or for the purpose of collecting statistics or examining the provisions made for the safety of employés, any member of the commission, inspector or other person designated by the commission for that purpose, may enter any place of employment.

(c) Any employer, insurance carrier or any other person who shall violate or omit to comply with any of the provisions of this section, or who shall in any way obstruct or hamper the commission, any commissioner or other person conducting any investigation authorized to be undertaken or made by the commission, shall be guilty of a misdemeanor.

SEC. 73. (a) All proceedings for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto, or for the enforcement against the employer or an insurance carrier of any liability for compensation imposed upon him by this act in favor of the injured employé, his dependents or any third person, or for the determination of any question as to the distribution of compensation among dependents or other persons or for the determination of any question as to who are dependents of any deceased employé, or what persons are entitled to any benefit under the compensation provisions of this act, or for obtaining any order which by this act the commission is authorized to make, shall be instituted before the commission, and not elsewhere, except as otherwise in this act provided, and the commission is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to the review by the courts in this act specified and in the manner and within the time in this act provided.

(b) All orders, rules and regulations, findings, decisions and awards of the commission in conformity with law shall be in force and shall be *prima facie* lawful; and all such orders, rules and regulations, findings, decisions and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the commission or upon a review by the

courts in this act specified and within the time and in the manner herein specified.

SEC. 74. (a) Any notice, order or decision required by this act to be served upon any person or party either before, during or after the institution of any proceeding before the commission, may be served in the manner provided by chapter V, title XIV of part II of the Code of Civil Procedure of this state, unless otherwise directed by the commission or a member thereof, in which event the same shall be served in accordance with the order or direction of said commission or member thereof.

(b) The secretary, assistant secretary and the inspectors appointed by the commission shall have all of the powers conferred by law upon peace officers to carry weapons, make arrests and serve warrants and other process in any county or city and county of this state.

(c) Any such notice, order or decision affecting the state or any city and county, city, school district or public corporation therein, shall be served upon the same officer, officers, person or persons, upon whom the service of similar notices, orders or decisions is authorized by law.

SEC. 75. The commission shall have full power and authority:

(1) To adopt reasonable and proper rules of practice and procedure;

(2) To regulate and provide the manner, and by whom, minors and incompetent persons shall appear and be represented before it;

(3) To appoint a trustee or guardian *ad litem* to appear for and represent any such minor or incompetent upon such terms and conditions as it may deem proper; and such guardian or trustee must give a bond in the same form and of the same character required by law from a guardian appointed by the courts and in such an amount as the commission or a commissioner may fix and determine, such bond to be approved by the commission or a commissioner, and such guardian or trustee shall not be discharged from liability until he shall have filed an account with the commission or with the probate court and such account shall have been approved. The trustee or guardian shall be entitled to receive such compensation for his services as shall be fixed and allowed by the commission or by the probate court;

(4) To provide for the joinder in the same proceeding of all

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California

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persons interested therein, whether as employer, insurance carrier, employé, dependent, creditor or otherwise;

(5) To regulate and prescribe the kind and character of notices, where not otherwise prescribed by this act, and the service thereof;

(6) To regulate and prescribe the nature and extent of the proofs and evidence.

SEC. 76. (a) The commission may by order entered upon its minutes, upon the agreement of the parties, upon the application of either, or of its own motion, and either with or without notice, direct and order a reference in the following cases:

(1) To try any or all of the issues in any proceeding before it, whether of fact or of law, and to report a finding, order, decision or award to be based thereon.

(2) To ascertain a fact necessary to enable the commission to determine any proceeding before it or to make any order, decision or award that the commission is authorized to make under this act, or that is necessary for the information of the commission.

(b) The commission may appoint one or more referees in any proceeding, as it may deem necessary or advisable, and may refer separate matters arising out of the same proceeding to different referees. It may also, in its discretion, appoint general referees who are residents of the county or city and county for which they are appointed and who shall hold office during the pleasure of the commission. Any referee appointed by the commission shall have such powers, jurisdiction and authority as is granted under the law, by the order of appointment and by the rules of the commission and shall receive such salary or compensation for his services as may be fixed by the commission.

(c) Any party to the proceeding may object to the appointment of any person as referee upon any one or more of the grounds specified in section 641 of the Code of Civil Procedure and such objection must be heard and disposed of by the commission. Affidavits may be read and witnesses examined as to such objections.

(d) Before entering upon his duties, the referee must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and determine the allegations and evidence of the parties in relation to the matters in the reference, and to make just findings and report according to his understanding.



(e) The referee must report his findings in writing to the commission within twenty days after the testimony is closed. Such report shall be made in the form prescribed by the commission and shall include all matters required to be included in the order of reference or by the rules of the commission. The facts found and conclusions of law must be separately stated.

(f) Upon the filing of the report of the referee, the commission may confirm, adopt, modify or set aside the same or any part thereof and may, either with or without further proceedings, and either with or without notice, enter its order, findings, decision or award based in whole or in part upon the report of the referee.

SEC. 77. (a) All hearings and investigations before the commission or any member thereof, or any referee appointed thereby, shall be governed by this act and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission nor any member thereof nor any referee appointed thereby shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved or confirmed by the commission.

(b) The commission or any member thereof or any party to the action or proceeding may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

SEC. 78. The commission and each member thereof, its secretary and referees, shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Each witness who shall appear, by order of the commission or a member thereof, or a referee appointed thereby, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise or-

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California

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dered by the commission. When any witness who has not been required to attend at the request of any party is subpoenaed by the commission his fees and mileage may be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission, member thereof, or referee as directed in the subpoena. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable.

Sec. 79. The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the commission or any member thereof or referee appointed thereby, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents, as required by any subpoena issued by the commission or member thereof or referee. The commission or the member thereof or the referee, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been subpoenaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the commission. The court, upon the petition of the commission or such member thereof or referee, shall enter an order directing the witness to appear before the court at a time

and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he had not attended and testified or produced said papers before the commission, member thereof or referee. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or member thereof or referee, the court shall thereupon enter an order that said witness appear before the commission or member thereof or referee at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the commission or a member thereof to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

SEC. 80. (a) The commission is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon it under this act.

(b) The commission and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any member thereof shall extend to all parts of the state and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the commission or any member thereof. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

SEC. 81. (a) Any party or person aggrieved directly or indirectly by any final order, decision, award, rule or regulation of the commission, made or entered under any provision contained in this act, may apply to the commission for a rehearing in respect

## California

to any matters determined or covered by such final order, decision, award, rule or regulation and specified in the application for rehearing within the time and in the manner hereinafter specified, and not otherwise.

(b) No cause of action arising out of any such final order, decision or award shall accrue in any court to any person until and unless such person shall have made application for such rehearing, and such application shall have been granted or denied; *provided*, that nothing herein contained shall be construed to prevent the enforcement of any such final order, decision, award, rule or regulation in the manner provided in this act.

(c) Such application shall set forth specifically and in full detail the grounds upon which the applicant considers said final order, decision, award, rule or regulation is unjust or unlawful, and every issue to be considered by the commission. Such application must be verified upon oath in the same manner as required for verified pleadings in the courts of record and must contain a general statement of any evidence or other matters upon which the applicant relies in support thereof. The applicant for such rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matter upon which such rehearing is sought other than those set forth in the application for such rehearing.

(d) A copy of such application for rehearing shall be served forthwith on all adverse parties, if any, and any such adverse party may file an answer thereto within ten days thereafter. Such answer must likewise be verified. If there are no adverse parties, such application may be heard *ex parte* or the commission may require the application for rehearing to be served on such parties as may be designated by it.

(e) Upon filing of an application for a rehearing, if the issues raised thereby have theretofore been adequately considered by the commission, it may determine the same by confirming without hearing its previous determination, or if a rehearing is necessary to determine the issues raised, the commission shall order a rehearing thereon and consider and determine the matter or matters raised by such application. Notice of the time and place of such rehearing shall be given to the applicant and the adverse parties, if any, and to such other persons as the commission may order.

(f) If after such rehearing and a consideration of all the facts, including those arising since the making of the order, decision or award involved, the commission shall be of the opinion that the original order, decision or award or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order, decision or award made after such rehearing, abrogating, changing or modifying the original order, decision or award shall have the same force and effect as an original order, decision or award, but shall not effect any right or the enforcement of any right arising from or by virtue of the original order, decision or award, unless so ordered by the commission. An application for a rehearing shall be deemed to have been denied by the commission unless it shall have been acted upon within thirty days from the date of filing; *provided, however*, that the commission may upon good cause being shown therefor, extend the time within which it may act upon such application for rehearing for not exceeding thirty days.

SEC. 82. (a) At any time within twenty days after the service of any final order or decision of the commission awarding or denying compensation, or arising out of or incidental thereto, any party or parties aggrieved thereby may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

- (1) That the commission acted without or in excess of its powers.
- (2) That the order, decision or award was procured by fraud.
- (3) That the evidence does not justify the finding of fact.
- (4) That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence have discovered and procured at the hearing.
- (5) That the findings of fact do not support the order, decision or award.

(b) Nothing contained in this section shall, however, be construed to limit the right of the commission, at any time within two hundred forty-five weeks from the date of its award, and from time to time, after due notice and upon the application of any party interested, to review, diminish or increase, within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

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California

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SEC. 83. (a) At any time within twenty days after the service of any other final order, decision, rule or regulation made by the commission under the provisions of this act, any party or parties, person or persons aggrieved thereby or otherwise affected, directly or indirectly, may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the order or decision was procured by fraud.

(3) That the order, decision, rule or regulation is unreasonable.

(b) Nothing contained in this section shall be construed to limit the right of the commission, at any time and from time to time, to adopt new or different rules or regulations or new or different standards of safety, or to abrogate, change or modify any existing rule, regulation, or standard, or any part thereof, or to deprive the commission of continuing jurisdiction over the same or to prevent the enforcement in the manner provided by this act, of any rules, regulations or standard of the commission, or any part thereof, when so adopted, or changed, or modified.

SEC. 84. (a) Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, any party affected thereby may apply to the supreme court of this state or to the district court of appeal of the appellate district in which such person resides, for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order, decision or award or the order, decision or award on rehearing inquired into and determined.

(b) Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard in the court unless for good cause the same be continued. No new or additional evidence may be introduced in such court but the cause shall be heard on the record to the commission as certified to by it. The review shall not be extended further than to determine whether or not:

(1) The commission acted without or in excess of its powers.

(2) The order, decision or award was procured by fraud.

(3) The order, decision, rule or regulation is unreasonable.

(4) If findings of fact are made, whether or not such findings of fact support the order, decision or award under review.

(c) The findings and conclusions of the commission on questions of fact shall be conclusive and final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the court shall enter judgment either affirming, modifying or setting aside the order, decision or award.

(d) The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with this act, apply to proceedings in the courts under the provisions of this section. No court of this state (except the supreme court and the district courts of appeal to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order, decision or award of the commission or to suspend or delay the operation or execution thereof, or to restrain, enjoin or interfere with the commission in the performance of its duties; *provided*, that a writ of mandamus shall lie from the supreme court or the district courts of appeal in all proper cases.

SEC. 85. (a) The filing of an application for a rehearing shall have the effect of suspending the order, decision, award, rule or regulation affected, in so far as the same applies to the parties to such application, unless otherwise ordered by the commission, for a period of ten days, and the commission may, in its discretion and upon such terms and conditions as it may by order direct, stay, suspend or postpone the same during the pendency of such rehearing.

(b) The filing of an application for, or the pendency of, a writ of review, shall not of itself stay or suspend the operation of the order, decision, award, rule or regulation of the commission subject to review, but the court before which such application is filed may, in its discretion, stay or suspend in whole or in part the operation of the order, decision, award, rule or regulation of the commission subject to review upon such terms and conditions as it may by order direct.

SEC. 86. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

## California

(b) If any section, subsection, subdivision, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases is declared unconstitutional.

(c) This act shall not be construed to apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the state or to employés injured while they are so engaged, except in so far as this act may be permitted to apply under the provisions of the Constitution of the United States or the acts of congress.

SEC. 87. (a) Any employer, having in his employment any employé not included within the term "employé" as defined by section fourteen of this act or not entitled to compensation under this act, and any such employé, may, by their joint election, elect to come under the compensation provisions of this act in the manner hereinafter provided.

(b) Such election on the part of the employer shall be made by filing with the commission a written statement to the effect that he accepts the compensation provisions of this act, which, when filed, shall operate, within the meaning of section twelve of this act, to subject him to the compensation provisions of this act, and of all acts amendatory thereof, for the term of one year from the date of filing, and thereafter without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of the commission a notice in writing that he withdraws his election. Such acceptance shall not be held to include employés whose employment is both casual and not in the usual course of the trade, business, profession or occupation of the employer, unless expressly mentioned therein.

(c) Any employé in the service of any such employer, shall be deemed to have accepted, and shall, within the meaning of section twelve of this act, be subject to the compensation provisions of this act, and of any act amendatory thereof, if, at the time of the accident for which liability is claimed:



(1) The employer charged with such liability is subject to the compensation provisions of this act, whether the employé has actual notice thereof or not; and

(2) Such employé shall not, at the time of entering into his contract of hire, have given to his employer notice in writing that he elects not to be subject to the compensation provisions of this act; or, in the event that such contract of hire was made in advance of the election by the employer, such employé shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed his election.

SEC. 88. The commission shall, not later than the first day of December of each calendar year, subsequent to the year 1913, make a report to the governor of the state covering its entire operations and proceedings for the previous fiscal year, with such suggestions or recommendations as it may deem of value for public information. Such report shall be printed and a copy thereof furnished to all applicants within this state.

SEC. 89. The sum of one hundred eighty-seven thousand four hundred seventy dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be used by the industrial accident commission in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said industrial accident commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

SEC. 90. All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 91. The compensation provisions of this act shall not apply to any injury sustained prior to the taking effect thereof.

SEC. 92. This act shall take effect and be in force on and after the first day of January, A. D. 1914.

No. 11,147.

FRANK C. JORDAN, *Secretary of State.*      FRANK H. CORY, *Deputy.*

## STATE OF CALIFORNIA

### DEPARTMENT OF STATE

I, FRANK C. JORDAN, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Senate Bill 905, Chapter 176, with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 18th day of June, A. D. 1913.

FRANK C. JORDAN,  
*Secretary of State.*

## CHAPTER 177

An act providing for the organization and management of mutual workmen's compensation insurance companies and defining the same and regulating the transaction of the business of mutual workmen's compensation insurance in the State of California.

[Approved May 26, 1913]

*The people of the State of California do enact as follows:*

SECTION 1. The term "compensation" as used in this act shall mean and include any liability imposed upon any or all employers of labor to compensate their employes and the dependents of such employes for any injury sustained by the said employes by accident arising out of and in the course of their employment irrespective of the fault of either party. The term "employer" as used in this act shall be construed to mean: Every person, firm, voluntary association and private corporation, (including any public service corporation) who has any person in service under any appointment or contract of hire or apprenticeship, express or implied, oral or written, and the legal representatives of any deceased employer. The term "employé" as used in this act shall be construed to mean: Every person in the service of an employer as defined by

this act under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors.

SEC. 2. (a) Mutual associations of any number of employers, not less than five, may, subject to the approval of the insurance commissioner, be formed by incorporating under the laws of this state, for the purpose of insuring their members against liability for compensation and insuring to the employes of such members the payment of such compensation.

(b) It shall be within the power of the insurance commissioner to limit the membership of any such mutual association to those employers engaged in the same general character of industry or to employers within a limited part of the state, whenever in his judgment such limitation shall be required for the protection of the members of such association or persons insured.

SEC. 3. Before the articles of incorporation shall be filed, a copy thereof shall be submitted for the approval of the insurance commissioner. Such articles shall set forth:

*First*—The names of the employers entering into such association, their places of residence, the nature of the business in which they are engaged and the number of persons employed by each.

*Second*—The name by which such association shall be known, which name shall include the word "mutual," and, if the liability of members is limited, the words "limited mutual."

*Third*—The period for which such association is incorporated, which shall not exceed fifty years.

*Fourth*—The number of directors, which shall not be less than five (5) nor more than eleven (11), and the names and residences of the directors for the first year.

*Fifth*—The location of the principal place of business, which shall be in this state.

Such articles must be executed, acknowledged, and filed as provided by law for the formation of other corporations.

SEC. 4. The members of any company organized under this act shall have power to make such by-laws, not inconsistent with the constitution and laws of this state, as may be deemed necessary for the government of its officers and members, for the admission of new members, for the assessment and collection of premiums

## California

and assessments and in general for the proper conduct of its affairs. Such by-laws shall not be effective until a copy thereof has been filed with the insurance commissioner and approved by him.

SEC. 5. Every employer accepting a policy in any company organized under this act shall thereby become a member of such company and shall become liable for his proportionate share of losses and operating expenses as hereinafter provided.

SEC. 6. No policy shall be issued by any company organized under this act until subscriptions for insurance have been received from at least one hundred employers having an annual pay roll of at least \$500,000.00 or having in their employment at least one thousand employes, nor until an amount in cash shall be in hand over and above all liabilities other than the unearned premium reserve of not less than fifteen thousand dollars and in any event not less than one full annual premium upon each risk. If at any time the number of employers insured shall fall below one hundred or if the annual pay roll of said employers shall fall below \$500,000.00 and the number of their said employes shall fall below one thousand then no further policies shall be issued until subscriptions have been received sufficient to comply with the requirements of this section.

SEC. 7. No single risk shall be insured by any company organized under this act upon which the premium charged is more than two per cent of the premiums charged upon all the policies that the company has in force.

SEC. 8. After a compensation insurance rate shall have been established by the state workmen's compensation insurance rating bureau no mutual company organized under this act shall charge a lesser rate upon any risk than the gross bureau rates applicable thereto.

SEC. 9. Every company organized under this act shall in its by-laws and policies fix the contingent mutual liability of its members for the payment of losses in excess of its available cash funds; but such contingent liability shall not be less than an amount equal to one annual premium in addition to the annual premium charged.

SEC. 10. Every company organized under this act shall be subject to all the general provisions of the law relative to other insurance companies and also to the general provisions of law ap-

plicable to all other corporations in so far as such provisions are not inconsistent or in conflict with the provisions of this act.

SEC. 11. If any company organized under this act is not possessed of cash funds above its unearned premium reserve and claims reserve and other liabilities sufficient for the payment of incurred losses and expenses it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liabilities.<sup>1</sup> The company shall cause to be recorded in a book kept for that purpose the order for such assessment and the amount of the assessment called for, together with a statement setting forth the condition of the company at the date of the order, the amount of its cash assets and contingent funds. Such record shall be made and signed by the directors or other persons who voted for the order and approved by the insurance commissioner before any part of the assessment is collected and any person liable to assessment may inspect and take a copy of the same.

SEC. 12. The directors of every such mutual company shall each year set aside as a surplus an amount equal to at least twenty-five per cent of all available profits until such surplus shall be an amount not less than the amount of all premiums charged upon all insurance in force after deducting therefrom the amount of premiums charged for any risks which have been reinsured in other insurance carriers. After setting aside the amount of profits required to be set aside by this section as a surplus fund, the directors of every such mutual association, at such times as their by-laws provide, must make, declare and pay to their members dividends of so much of the additional available profits accrued from the business of the association and interest on moneys invested as to them appears advisable; *provided, however*, that no such dividend shall be declared or paid unless there is then on hand a surplus of not less than \$15,000 and equal to at least twenty-five per cent of all premiums charged upon all insurance in force after deducting therefrom the amount of premiums charged for any risks which may have been reinsured in other insurance carriers.

SEC. 13. No assessment shall be levied and no dividend shall be declared until such assessment or such dividend has been approved by the insurance commissioner.

SEC. 14. The funds of any company organized under this act

shall be invested in the manner allowed for the investment of the funds of other insurance companies.

SEC. 15. The expenses for any calendar year of any company organized under this act, including commissions and fees to agents and officers, but not including expenses incurred for the prevention of injuries, shall be limited to thirty per cent of the gross premiums actually received during that year. A violation of this provision shall render the officers and directors and all persons having similar powers jointly and severally liable to such company for any amount used for expenses in excess of the amount provided for in this section. In the event that such company fails or refuses to recover such moneys so paid the insurance commissioner may sue for and recover the same from any one or all of the officers or directors and all persons having similar powers of such company for the benefit of its members. No officer or other person, whose duty it is to determine the character of the risks, and to decide what applications shall be accepted and what applications shall be rejected by such company, shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share of the net profits as the directors or trustees may determine.

SEC. 16. Whenever the liabilities of any company organized under this act for losses reported, expenses, taxes, unearned premium reserve and claims reserve are greater than its admitted cash assets then such company is insolvent.

SEC. 17. Every company organized under this act shall file with the insurance commissioner on or before the first day of March of each year, its financial statement exhibiting its condition on the thirty-first day of December next preceding. Such statement shall be made as provided for in the blanks furnished by the insurance department.

SEC. 18. The directors of any company organized under this act shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of members and for this purpose the inspectors of the company shall have free access to all such premises during regular working hours. Any employer or employé aggrieved by any such rule or regulation may petition the industrial accident commission for a review, and it may affirm, amend or annul the rule or regulation.

SEC. 19. Auditors, inspectors and other agents of the company shall have free access to the wages accounts and payrolls of members for the purpose of verifying payrolls.

SEC. 20. Any member of any company organized under this act may withdraw at any time by giving thirty days written notice of his intention to withdraw and surrendering his policy; *provided, however,* that he shall discharge all his obligations to the company at the time of his withdrawal. The termination of such insurance shall not act to release the member withdrawing from liability for the payment of his assigned share of all assessments then or thereafter made to make up deficiencies due to accidents happening while he was insured in such company. The premium for such surrendered policy shall be returned to the member withdrawing less the customary short term premium for a time during which the policy was in force. The company shall have power to cancel or determine any policy by giving the insured five days' written notice to that effect and returning to the insured his *pro rata* part of the premium.

SEC. 21. Any company organized under this act shall have power to amend its articles of association and by-laws at its regular annual meeting or at special meetings called and held as provided in its by-laws, but said amendments shall, before they become operative, be approved and filed in the same manner as the original articles and by-laws.

SEC. 22. Any company organized under this act shall have power to own, hold and acquire such real and personal property as shall be necessary for the transaction of its business.

SEC. 23. Any company organized under this act may sue and be sued in any court of law or equity, with the same rights and obligations as a natural person, and in addition to the powers hereinbefore enumerated, shall possess and exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted herein.

SEC. 24. This act shall not apply to contracts made between persons, firms or corporations of this state, and others of this state and other states for the protection of their own property under the plan known as reciprocal insurance or interinsurance, nor to unincorporated inter-indemnity compacts.

ROSEBERRY EMPLOYERS' LIABILITY ACT

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## CHAPTER 399, LAWS OF 1911

AN ACT relating to the liability of employers for injuries or death sustained by their employes, providing for compensation for the accidental injury of employes, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards.

*The people of the State of California, represented in senate and assembly, do enact as follows:*

## ABROGATION OF DEFENSES

SECTION 1. In any action to recover damages for a personal injury sustained within this State by an employé while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, the fact that such employé may have been guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of negligence attributable to such employé, and it shall be conclusively presumed that such employé was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employes contributed to such employé's injury; and it shall not be a defense:

(1). That the employé either expressly or impliedly assumed the risk of the hazard complained of.

(2). That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

SEC. 2. No contract, rule or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.



## LIABILITY FOR COMPENSATION

SEC. 3. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury accidentally sustained by his employés, and for his death if the injury shall approximately cause death, in those cases where the following conditions of compensation concur:

(1). Where, at the time of the accident, both the employer and employé are subject to the provisions of this act according to the succeeding sections hereof.

(2). Where, at the time of the accident, the employé is performing service growing out of and incidental to his employment and is acting within the line of his duty or course of his employment as such.

(3). Where the injury is approximately caused by accident, either with or without negligence, and is not so caused by the wilful misconduct of the employé.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death, except that when the injury was caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employés from bodily injury, the employé may, at his option, either claim compensation under this act, or maintain an action for damages therefor; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions, of the preceding sections of this act.

SEC. 4. The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

(1). The state, and each county, city and county, city, town, village and school districts and all public corporations, every person, firm, and private corporation, (including any public service corporation) who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employé for which com-

pensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, at the time of such accident, have withdrawn such election. in the manner provided in the next section.

SEC. 5. Such election on the part of the employer shall be made by filing with the industrial accident board, hereinafter provided for a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section three of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he withdraws his election to be subject to the provisions of the act.

SEC. 6. The term "employé" as used in section three of this act shall be construed to mean:

(1) Every person in the service of the state, or any county, city and county, city, town, village or school district therein, and all public corporations, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city and county, city, town, village or school district therein or any public corporation, who shall have been elected or appointed for a regular term of one or more years, or to complete the unexpired portion of any such regular term.

(2) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state, (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employés), but not including any person whose employment is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

SEC. 7. Any employé as defined in subsection (1) of the preceding section shall be subject to the provisions of this act and of

## California Act of 1911

any act amendatory thereof. Any employé as defined in subsection (2) of the preceding section shall be deemed to have accepted and shall, within the meaning of section 3 of this act be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

(1). The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

(2). At the time of entering into his contract of hire, express or implied, with such employer, such employé shall not have given to his employer notice in writing that he elects not to be subject to the provisions of this act, or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of the act, such employé shall, without giving such notice, remain in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

## SCALE OF COMPENSATION

SEC. 8. Where liability for compensation under this act exists the same shall be as provided in the following schedule:

(1) Such medical and surgical treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same; provided, however, that the total liability under this subdivision shall not exceed the sum of \$100.00.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employé leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability; provided, that if the disability is such as not only to render the injured employé entirely incapable of work, but also

so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance shall be increased to one hundred per cent of the average weekly earnings.

(b) If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subsections (a) and (b) respectively.

(d) Said subsections (a), (b) and (c) shall be subject to the following limitations:

Aggregate disability indemnity for a single injury shall not exceed three times the average annual earnings of the employé.

If the period of disability does not last more than one week from the day the employé leaves work as the result of the accident no indemnity whatever shall be recoverable.

If the period of disability lasts more than one week from the day the employé leaves work as the result of the accident, no indemnity shall be recoverable for the first week of the period of such disability.

The aggregate disability period shall not, in any event extend beyond fifteen years from the date of the accident.

(3) The death of the injured employé shall not affect the obligation of the employer under subsections (1) and (2) of this section, so far as his liability shall have accrued and become payable at the time of the death, but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability benefits, provided that such death was approximately caused by the accident causing such disability:

(a) In case the deceased employé leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient when added to the benefits which shall, at the time of death, have accrued and become payable under the provisions of subsection (2) of this section to make the total compensation for the injury and death, (exclusive of the benefit provided for in subsection (1), equal to three times his annual average earnings, not less than \$1,000 nor more than \$5,000, the same

to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding in amount to the weekly earnings of the employé.

(b) In case the deceased employé leaves no one wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employé as the annual amount devoted by the deceased to the support of the person or persons so partially dependent upon him for support bears to such average earnings, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding to the weekly earnings of the employé; provided, that the total compensation for the injury and death, (exclusive of the benefit provided for in said subsection (1) shall not exceed three times such average annual earnings.

(c) In the event that the accident shall have approximately caused permanent disability, either total or partial, and the employé shall die within fifteen years after the date of the accident, liability for the death benefits provided for in said subsections (a) and (b) respectively shall exist only where the accident was the approximate cause of death within said period of fifteen years.

(d) If the deceased employé leaves no person dependent upon him for support, and the accident approximately causes death, the death benefit shall consist of the reasonable expenses of his burial not exceeding \$100.

#### METHOD OF COMPUTATION

SEC. 9. (1) The weekly earning referred to in section (8) shall be one fifty-second of the average annual earnings of the employé; average annual earnings shall not be taken at less than \$333.33, nor more than \$1,666.66, and between said limits shall be arrived at as follows:

(a) If the injured employé has worked in such employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned as such employé during the days when so employed.

(b) If the injured employé has not so worked in such employ-

ment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employé can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the average earning capacity of the injured employé at the time of the injury in the employment in which he was working at such time.

(d) The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude him from compensation for a later injury, or for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, and shall be arrived at according to the previous provisions of this section.

(2) The weekly loss in wages referred to in section 8, shall consist of the difference between the average weekly earnings of the injured employé, computed according to the provisions of this section, and the weekly amount which the injured employé, in the exercise of reasonable diligence, will probably be able to earn, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

(3) The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employé:

(a) A wife upon a husband.

(b) A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the

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California Act of 1911

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time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employé, and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided equally among them and persons partially dependent, if any, shall receive no part thereof, and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

(4) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the death of the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees.

## NOTICE OF INJURY

SEC. 10. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured or someone in his behalf, or in case of his death, by a dependent or someone in his behalf, shall be served upon the employer by delivering to and leaving with him a copy of such notice or by mailing to him by registered mail a copy thereof in a sealed and posted envelope addressed to him at his last known place of business or residence. Such mailing shall constitute complete service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days shall be equivalent to the notice herein required, and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the pro-

ceedings for collections of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby, and provided further that if no such notice is given and no payment of compensation made, within one year from the date of the accident, the right to compensation therefor shall be wholly barred.

#### EXAMINATION BY PHYSICIAN

SEC. 11. Wherever in case of injury the right to compensation under this act would exist in favor of any employé, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said Industrial Accident Board, or any member or examiner thereof. The employé shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employé, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

#### INDUSTRIAL ACCIDENT BOARD

SEC. 12. Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to a board consisting of three members, which shall be known as the industrial accident board. Within thirty days before this act shall take effect, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve three years, and another who shall serve four years. Thereafter such three members shall be appointed and confirmed for terms of four years



each. Vacancies shall be filled in the same manner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. Each member of the board shall receive an annual salary of three thousand six hundred dollars.

SEC. 13. The board shall organize by choosing one of its members as chairman. Subject to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required. It may also appoint a secretary and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed.

SEC. 14. The board shall keep its office at the city of San Francisco, and shall be provided by the secretary of state with a suitable room or rooms, necessary office furniture, stationery, and other supplies. The members of the board and its assistants, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state the same as other general state expenses are audited and paid.

#### NOTICE OF HEARING

SEC. 15. Upon the filing with the board by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation under this act, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing to be given to each party interested by service of such notice on him personally or by mailing

## California Act of 1911

a copy thereof to him at his last known post office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board, and hearings shall be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as shall be pertinent to the controversy before the board, but the board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be had, or the time books and payroll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time, direct any employé claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby shall have power and authority to issue subpoenas to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the superior court of any county, or city and county.

SEC. 16. After final hearing by said board, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the party.

SEC. 17. Either party may present a certified copy of the award to the superior court for any county or city and county, whereupon said court shall, without notice, render a judgment in accordance therewith, which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with the like effect, be entered and docketed.

## REVIEW BY COURT

SEC. 18. The findings of fact made by the board acting within its powers, shall, in the absence of fraud, be conclusive, and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: within thirty days from the date of the award, any party

## California Act of 1911

aggrieved thereby may file with the board an application in writing for a review of such award, stating generally the grounds upon which such review is sought; within thirty days thereafter the board shall cause all documents and papers on file in the matter, and a transcript of all testimony which may have been taken therein, to be transmitted with their findings and award to the clerk of the superior court of that county or city and county wherein the accident occurred; such application for a review may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other, subject, however, to the provisions of law for a change of the place of trial or the calling of another judge. Upon such hearing the court may confirm or set aside such award, and any judgment which may theretofore have been rendered thereon, but the same shall be set aside only upon the following grounds:

- (1) That the board acted without or in excess of its powers.
- (2) That the award was procured by fraud.
- (3) That the findings of fact by the board do not support the award.

## REMANDING OF RECORD

SEC. 19. Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board, for further hearing or proceedings, or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties, or city and county.

SEC. 20. Any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the superior court; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as criminal causes on such calendar.

SEC. 21. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except

for the docketing of judgments and for certified copies or transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court.

SEC. 22. No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation award, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

SEC. 23. A claim for compensation for the injury or death of any employé, or any award or judgment entered thereon, shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employé shall be so preferred; but this section shall not impair the lien of any judgment entered upon any award.

#### INSURANCE PROVISIONS

SEC. 24. Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their families, dependents, or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contributions, or other benefit whatsoever due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company, which may, in whole or in part have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as

between the employer and the insurance company, payment by either directly to the employé, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

SEC. 25. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law.

SEC. 26. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment of any assignable cause of action in tort which the employé or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

#### POSTING OF NOTICES

SEC. 27. The board shall cause to be printed and furnished free of charge to any employer or employé such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his withdrawal of such election, and the date of the filing thereof; and a book in which shall be recorded all awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employés, by posting and keeping continuously posted in a public and conspicuous place such notice thereof in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective, and the board

shall cause notice to be given in like manner of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and withdrawals of election, and of the time of the filing of the same, shall conclusively be imputed to all employés.

SEC. 28. Nothing in this act contained shall be construed as impairing the right of parties interested, after the injury or death of an employé, to compromise and settle upon such terms as they may agree upon, any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the dependents of any injured employé any interest which he may not divert by such settlement or for which he or his estate shall, in the event of such settlement by him, be accountable to such dependents or any of them.

SEC. 29. The sum of fifty thousand dollars is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, to be used by the industrial accident board in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said industrial accident board for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

SEC. 30. All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 31. This act shall take effect and be in force on and after the first day of September, A. D. 1911.

## CONNECTICUT

(L. 1913, c. 138 of Public Acts)

AN ACT concerning compensation to workmen injured in the course of their employment.

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*Be it enacted by the Senate and House of Representatives in General Assembly convened:*

### PART A. EMPLOYERS' LIABILITY

SECTION 1. *Defenses Abolished.* In an action to recover damages for personal injury sustained by an employee arising out of and in the course of his employment, or for death resulting from injury so sustained, it shall not be a defense: (a) That the injured employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the injured employee had assumed the risk of the injury.

SEC. 2. *Scope of Part A.* The provisions of section one of part A of this act shall not apply to actions to recover damages for personal injuries sustained by employees of any employer having regularly less than five employees, by casual employees, or by outworkers; nor shall the same provisions apply to actions against any employer who shall have accepted part B of this act in the manner hereinafter prescribed.

### PART B. WORKMEN'S COMPENSATION

SECTION 1. *Acceptance of Part B.* When any persons in the mutual relation of employer and employee shall have accepted part B of this act, the employer shall not be liable to any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from injury so sustained; but the employer shall pay compensation on account of such injury in accordance with the scale hereinafter provided, except that no

## Connecticut

compensation shall be paid when the injury shall have been caused by the wilful and serious misconduct of the injured employee or by his intoxication. The acceptance of part B of this act by employers and employees shall be understood to include the mutual renunciation and waiver of all rights and claims arising out of injuries sustained in the course of employment as aforesaid, other than rights and claims given by part B of this act, including the right of jury trial on all questions affecting compensation and all right of appeal from the compensation commissioners except as hereinafter established.

SEC. 2. *Acceptance Presumed.* Every contract of employment not made before the date of this act shall be conclusively presumed to include a mutual agreement between employer and employee to accept part B of this act and be bound thereby, unless either employer or employee shall by written stipulation in the contract, or by such other notice as is prescribed in section three of part B, indicate his refusal to accept the provisions of said part B. Every contract of employment made before the date of this act and continued in force after said date shall be conclusively presumed to include a mutual agreement between employer and employee to accept part B of this act and be bound thereby, unless by the date at which this act goes into effect either employer or employee has indicated his refusal to accept said part B in the manner prescribed in section three of said part B.

SEC. 3. *Manner of Acceptance and Withdrawal.* Acceptance of part B of this act may be withdrawn by written or printed notice from either employer or employee to the other party and to the compensation commissioner of the district in which the employee is employed. Notice of withdrawal may be served by personal presentation or by registered letter addressed to the person on whom it is to be served at his last known residence or place of business; and such notice shall become effective thirty days after service. Either employer or employee who has withdrawn acceptance may renew the same by the same notice and procedure as is prescribed for withdrawals. Notices in behalf of a minor shall be given by his parent or guardian, or, if there be no parent or guardian, then by such minor.

SEC. 4. *Effect of Non-Acceptance.* Every employer not accepting part B of this act shall be liable to action for damages



on account of personal injury to his employees in accordance with the provisions of part A of this act, and every employee not accepting part B of this act shall lose all rights and benefits of part A of this act with reference to any employer who continues to accept said part B.

SEC. 5. *Principal Employer, Contractor, and Sub-Contractor.* When any principal employer procures any work to be done, wholly or in part for\*him, by a contractor, or through him by a sub-contractor, and the work so procured to be done is a part or process in the trade or business of such principal employer, and is performed in, on, or about premises under his control, then such principal employer shall be liable to pay all compensation under this act to the same extent as if the work were done without the intervention of such contractor or sub-contractor.

SEC. 6. *Liability of Third Persons.* When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employé may, at his option, either claim compensation under this act or proceed at law against such other person to recover damages; and, if compensation is claimed and paid under this act, any employer having paid the compensation shall be subrogated to the rights of the injured employé to recover against that person, provided if the employer shall recover from such other person damages in excess of the compensation already paid, or awarded to be paid under this act, then any such excess shall be paid to the injured employé, less the employer's expenses and costs of action.

SEC. 7. *Medical and Surgical Care.* The employer shall provide a competent physician or surgeon to attend any injured employé during the thirty days immediately following the injury, as such injury may require, and in addition shall furnish such medical and surgical aid or hospital service, during such thirty days, as such physician or surgeon shall deem reasonable or necessary. In the event of the failure of the employer promptly to provide such physician or surgeon or such medical or surgical or hospital service, during any portion of such thirty days, the injured employé may provide such physician or surgeon or medical or surgical or hospital service at the expense of the employer. Or, at his option, the injured employé may refuse the medical, surgical, and hos-

## Connecticut

pital service provided by his employer and provide the same at his own expense. If it shall appear to the commissioner that an injured employé has refused to accept and failed to provide such reasonable medical, surgical, or hospital care, all rights of compensation under this act shall be suspended during such refusal and failure. The pecuniary liability of the employer for the medical, surgical, and hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons.

SEC. 8. *Waiting Period.* No compensation shall be payable under this act on account of any injury which does not incapacitate the injured employé for a period of more than two weeks from earning full wages at his customary employment; but if incapacity extends beyond a period of two weeks compensation shall begin on the fifteenth day after the injury.

SEC. 9. *Compensation for Fatal Injuries.* Compensation shall be paid on account of death resulting from injuries within two years from date of injury as follows: (a) For burial expenses one hundred dollars; (b) to those totally dependent upon the deceased employé at the time of his injury a weekly compensation equal to half of the average weekly earnings of the deceased at the time of his injury; (c) in case there is no one totally dependent upon the deceased employé then to those partially dependent upon the deceased employé at the time of his injury a weekly compensation not exceeding that payable to total dependents and of such proportionate sum as may be determined according to the measure of dependence; (d) in case there are no dependents of the deceased employé the sum of seven hundred and fifty dollars, to be paid to the State treasurer and by him set apart as a fund to be used for the payment of lawful expenses of the commissioners; but the compensation payable on account of death resulting from injuries shall in no case be more than ten dollars or less than five dollars weekly, and such compensation shall not continue longer than three hundred and twelve weeks after death. The compensation on account of death payable under this act to a widow or widower of a deceased employé shall not cease with the death of such widow or widower, but upon her or his death within the period during which such compensation is payable it shall continue to be paid for the

remainder of such period to her or his dependents as defined in section forty-three.

SEC. 10. *Meaning of Dependence.* The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employé: (a) A wife upon a husband with whom she lives at the time of his injury or from whom she receives support regularly; (b) a husband upon a wife with whom he lives at the time of her injury or from whom he receives support regularly; (c) a child or children under the age of eighteen years, or over said age but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living or from whom he is or they are receiving support regularly at the time of the injury of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent the death benefit shall be divided equally among them. In all other cases questions of dependency, total or partial, shall be determined in accordance with the fact, as the fact may be at the time of the injury. In such other cases, if there is more than one person totally dependent, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof. If there is no person totally dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative degrees of their dependence. For the purposes of this act the dependence of a widow or widower of a deceased employé shall be construed to terminate with remarriage and the dependence of a child, except a child physically or mentally incapacitated from earning, with the attainment of eighteen years. Compensation under this section shall be paid to alien dependents in half the amounts indicated in this section unless such alien dependents are residents of the United States, or its dependencies, or Canada.

SEC. 11. *Compensation for Total Incapacity.* In case the injury results in total incapacity to perform work of any character, there shall be paid to the injured employé a weekly compensation equal to half of his average weekly earnings at the time of the injury; but the compensation shall in no case be more than ten dollars or less than five dollars weekly; and such compensation shall not continue longer than the period of total incapacity, or in any event longer than five hundred and twenty weeks. The

## Connecticut

following injuries of any person shall be considered as causing total incapacity and compensation shall be paid accordingly: (a) Total and permanent loss of sight in both eyes; (b) the loss of both feet at or above the ankle; (c) the loss of both hands at or above the wrist; (d) the loss of one foot at or above the ankle and one hand at or above the wrist; (e) any injury resulting in permanent and complete paralysis of the legs or arms or of one leg and one arm; (f) any injury resulting in incurable imbecility or insanity.

SEC. 12. *Compensation for Partial Incapacity.* In case the injury results in partial incapacity, there shall be paid to the injured employé a weekly compensation equal to half the difference between his average weekly earnings before the injury and what he is able to earn thereafter. This compensation shall in no case be more than ten dollars weekly and shall continue during the period of partial incapacity, but not longer than three hundred and twelve weeks. If the employer procures for an injured employé employment suitable to his capacity the wages offered in such employment shall be taken as the earning capacity of the injured employé. In case of the following injuries the compensation, in lieu of all other payments, shall be half of the previous average weekly earnings of the injured employé for the terms respectively indicated: (a) for the loss of one arm at or above the elbow, or the complete and permanent loss of the use of one arm, two hundred and eight weeks; (b) for the loss of one hand at or above the wrist, or the complete and permanent loss of the use of one hand, one hundred and fifty-six weeks; (c) for the loss of one leg at or above the knee, or the complete and permanent loss of the use of one leg, one hundred and eighty-two weeks; (d) for the loss of one foot at or above the ankle, or the complete and permanent loss of the use of one foot, one hundred and thirty weeks; (e) for the complete and permanent loss of hearing in both ears, one hundred and fifty-six weeks; (f) for the complete and permanent loss of hearing in one ear, fifty-two weeks; (g) for the complete and permanent loss of sight of one eye, one hundred and four weeks; (h) for the loss of a thumb, thirty-eight weeks; (i) for the loss of a first finger or a great toe, thirty-eight weeks; (j) for the loss of a second finger, thirty weeks; a third finger, twenty-five weeks; a fourth finger, twenty weeks; (k) for the loss of any toe except the great toe, thirteen weeks. The loss of one phalange of a thumb or two

## Connecticut

phalanges of a finger shall be considered half the loss of a thumb or finger respectively, and shall be compensated accordingly.

SEC. 13. *Average Weekly Earnings.* For the purpose of this act, the average weekly wage shall be ascertained by dividing the total wages received by the injured workman from the employer in whose service he is injured during the twenty-six calendar weeks immediately preceding that during which he was injured, by the number of said calendar weeks during which, or any portion of which, said workman was actually employed by said employer, provided in making such computation absence for seven consecutive calendar days, although not in the same calendar week, shall be considered as absence for a calendar week. Where the employment commenced other than at the beginning of a calendar week, such calendar week and the wages earned during such week, shall be excluded in making the above computation. Where the employment previous to injury as provided above is computed to be less than a net period of two calendar weeks, then his weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment in the same locality at the time of injury.

SEC. 14. *Allowance for Advance Payments.* In fixing the amount of any compensation under this act due allowance shall be made for any sum which the employer may have paid to any injured employé or to his dependents on account of the injury, except such sums as the employer may have expended or directed to be expended for medical, surgical, or hospital service.

SEC. 15. *Revision of Awards.* Any award of compensation made under this act shall be subject to modification, upon the request of either party and in accordance with the procedure for original determinations, whenever it shall appear to the compensation commissioner or commission that the incapacity of an injured employé has increased, decreased, or ceased, or that the measure of dependence on account of which the compensation is paid has changed.

SEC. 16. *Appointment and Term of Compensation Commissioners.* Within ninety days after the passage of this act the governor shall appoint five competent persons, one for each of the five congressional districts as at present constituted, to be known as

## Connecticut

compensation commissioners, and shall designate one of them as chairman. The term of office of the compensation commissioners shall be five years, except that when first appointed one shall be appointed for one year and three months from October 1, 1913, one for two years and three months from said date, one for three years and three months from said date, one for four years and three months from said date, and one for five years and three months from said date. Thereafter, upon the expiration of the term for which a commissioner is first appointed, his successor shall be appointed by the governor for the full term of five calendar years. After due notice and public hearing the governor may remove any commissioner for cause and the good of the public service. Said commissioners shall be sworn to a faithful performance of their duties. Vacancies occurring during a term shall be filled by the governor.

SEC. 17. *Powers of Commissioners.* Each commissioner shall, for the purpose of this act, have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts, or other papers in relation to any matter at issue as he may find proper, and shall have the same powers in reference thereto as are now vested in magistrates taking depositions. He shall have power to certify to official acts, and all powers necessary to enable him to perform the duties imposed upon him by this act. The commissioners shall reside in the districts for which they are severally appointed and each shall have jurisdiction of all claims and questions arising in such district under part B of this act. The commissioner for the first congressional district shall maintain an office at some convenient location in the city of Hartford; the commissioner for the second district an office similarly located in the city of Willimantic; the commissioner for the third district, in the city of New Haven; the commissioner for the fourth district, in the city of Bridgeport; and the commissioner for the fifth district, in the city of Waterbury. Each commissioner shall keep his office open during reasonable business hours of every day except Sundays and legal holidays, but he shall have power to hear and decide cases at any other place within his district. In case a commissioner is disqualified or temporarily incapacitated

from hearing any matter, he shall designate some other commissioner to hear and decide said matter and such other commissioner shall possess the same jurisdiction and power, for the purposes of such hearing, as such incapacitated or disqualified commissioner. The superior court, on application of a commissioner or the commission, or of the attorney-general, may enforce, by appropriate decree or process, any provision of this act or any proper order of a commissioner or the commission rendered in pursuance of any such provision.

SEC. 18. *The Board of Commissioners.* Acting together, the commissioners shall have power to adopt and change such common rules, procedure, and forms as they shall deem expedient for the purposes of this act. Annually the commissioners shall prepare and submit to the governor a report of their doings including such recommendations as they shall think proper for the improvement of this act or its administration.

SEC. 19. *Salaries and Expenses of Commissioners.* Each of the commissioners shall receive a salary of four thousand dollars per annum, payable in equal monthly installments, and in addition such allowance, not exceeding two thousand dollars a year, as may be approved by the comptroller for expenses incurred in the discharge of his duties.

SEC. 20. *Reports of Accidents.* Every employer who has accepted part B of this act shall keep a record of such injuries sustained by his employees in the course of their employment as result in incapacity for one day or more, and every such employer shall send each week to the commissioner such report of said injuries as the commission shall require, with such notices of claims for compensation as have been served upon him within one week, in conformity with the provisions of section twenty-one. No other report of injuries to employees shall be required by any department or office of the state from such employers as have accepted part B, and copies of all reports of injuries received by a commissioner shall by him be transmitted to the factory inspector once in three months.

SEC. 21. *Claims for Compensation.* No proceedings for compensation under this act shall be maintained unless a written notice of the injury shall have been given to the employer by the injured employee or in his behalf within thirty days of the hap-

pening thereof, and during the continuance of the incapacity on account of which compensation is claimed, nor unless claim for compensation is made within one year from the date of the injury. Such notice shall state in ordinary language the date, place, and nature of the injury, the name and address of the injured employee, and the person in whose interest compensation is claimed. Notices may be served in the same manner as notices of withdrawal from the provisions of part B of this act; and, in cases of fatal injuries, notice may be served either by any one of the dependents under this act or by the legal representative of the deceased employee; but no want, defect, or inaccuracy of such notice and claim shall be a bar to the maintenance of proceedings unless the employer shall show that he was ignorant of the injury and was prejudiced by want, defect, or inaccuracy of notice. Upon satisfactory showing of such ignorance and prejudice, the employer shall receive allowance to the extent of such prejudice. Within one week after the receipt by an employer of such notice of injury and claim for compensation he shall report the substantial facts of said notice and claim to the commissioner.

SEC. 22. *Voluntary Agreements.* If an employer and an injured employee, or in case of fatal injury his legal representative, shall, not earlier than two weeks after the date of the injury, reach an agreement in regard to compensation, such agreement shall by the employer be submitted in writing to the commissioner, with a statement of the time, place, and nature of the injury upon which it is based; and if said commissioner shall find said agreement to conform to the provisions of this act in every regard he shall so approve it. Every agreement thus approved shall be filed in the office of the clerk of the superior court for the county in which the injury occurred and a copy thereof shall be retained by the Commissioner, and a copy of the same delivered to each of the parties and thereafter it shall be as binding upon both parties as an award by the commissioner. Such agreements shall be subject to subsequent modification as changed conditions may justify, but no modification shall be valid until approved and filed by the commissioner.

SEC. 23. *Medical Examinations.* At any time while claiming or receiving compensation, upon the reasonable request of the



employer or at the direction of the commissioner, an injured employee shall submit himself to examination by a reputable practicing physician or surgeon provided and paid by the employer, with a view to a determination of the nature of the injury and the incapacity resultant therefrom. At any such examination the injured employee shall be allowed to secure the attendance of any reputable practicing physician or surgeon provided and paid by himself. The refusal of an injured employee thus to submit himself to a reasonable examination shall suspend his right to compensation during such refusal.

SEC. 24. *Hearings of Claims.* If an employer and his injured employee, or his legal representative, as the case may be, shall fail to reach an agreement in regard to compensation under this act, either party may notify the commissioner of the failure. Upon such notice, or upon other knowledge that an agreement has not been reached in a case in which compensation is claimed, the commissioner shall appoint an early hearing upon the matter, giving both parties due notice of time and place not less than ten days prior to the date appointed. Hearings shall be held, if practicable, in the town in the state in which the injured employee resides; and, if such place is not practicable, in such other convenient place as the commissioner may prescribe. Sufficient notice of such hearing may be given to the parties in interest by a brief written statement in ordinary terms of the date, place, and nature of the injury upon which the claim for compensation is based.

SEC. 25. *Conduct of Hearings.* Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond such informal notices as the commission shall approve. In all cases and hearings under this act the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but may make inquiry in such manner, through oral testimony or written and printed records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit of this act. No fees shall be taxed or charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner

may and shall furnish at actual cost certified copies of any testimony, award, or other matter which may be of record in his office. Witnesses subpoenaed by the commissioner shall be allowed such fees and traveling expenses as are allowed in civil actions, to be paid by the party subpoenaing said witnesses.

SEC. 26. *Awards of Commissioner.* As soon as may be after the conclusion of any hearing the commissioner shall send to each party a written copy of his finding and award and shall file a third copy in his office. The original award shall be filed in the office of the clerk of the superior court for the county in which the injury occurred. If no appeal from his decision is taken by either party within ten days thereafter said finding and award shall be final and may be enforced in the same manner as a judgment of the superior court. The superior court is hereby authorized to issue execution upon any uncontested or final award of a commissioner in the same manner as in cases of judgments rendered in the superior court.

SEC. 27. *Appeals.* At any time within ten days after entry of such finding and award by the commissioner either party may appeal therefrom to the superior court for the county in which the injury was sustained. The clerk of said court shall notify the adverse party of such appeal. No bond for prosecution shall be required on any such appeal unless property of the defendant is attached therein. Actions brought into the superior court under the provisions of this section shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. No costs shall be taxed in favor of either party on any such appeal.

SEC. 28. *Commutation into Lump Sums.* Whenever he deems it just or necessary the commissioner may approve or direct the commutation of weekly compensations under this act, into monthly or quarterly payments, or into a single lump sum. In any such case of commutation, a true equivalence of value shall be maintained, with due discount of sums payable in the future; and when commutation is made into a single lump sum, the commissioner may direct that it be paid into any savings bank, trust company, or life insurance company which is authorized to do business within this state, to be held in trust for the

beneficiary or beneficiaries under this act, and paid out in conformity with the provisions of this act.

SEC. 29. *Substitute Systems of Compensation.* With the approval of the state insurance commissioner any employer subject to the provisions of part B may enter into an agreement with his employees to provide a system of compensation, benefit, and insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor shall any such substitute system be approved which contains an obligation of employees to join in it as a condition of employment, or which in that case does not contain equitable provision for the withdrawal of employees from it and the distribution of its assets. If any such system requires contributions from employees it shall not be approved unless it confers benefits in addition to those provided under this act at least commensurate with such contributions. The insurance commissioner, having given his approval of such substitute system, shall have over it all the jurisdiction given him by chapter 186 of the public acts of 1909 over insurance companies. He may withdraw his approval upon reasonable notice to the employer and order a distribution of the assets, subject to the right of any party in interest to take an appeal to the superior court for Hartford county.

SEC. 30. *Insurance of Compensation Liability.* Every employer subject to part B who shall not furnish to the commissioner satisfactory proof of his solvency and financial ability to pay directly to injured employees or other beneficiaries the compensation provided by this act, shall insure his full liability under part B in one or both the following ways: (1) By filing with the insurance commissioner in form acceptable to him security guaranteeing the performance of the obligations of this act by said employer; or, (2) by insuring his full liability under part B of this act in such stock or mutual companies or associations as are or may be authorized to take such risks in this state, or by such combination of the above-mentioned two methods as he may choose, subject to the approval of the insurance commissioner.

SEC. 31. *Requirements in Insurance Policies.* Every policy

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Connecticut

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insuring the payment of compensations under this act shall contain a clause to the effect that as between the employee and the insurer notice and knowledge of the occurrence of injury by the insured shall be deemed notice and knowledge by the insurer, that jurisdiction of the insured for the purposes of this act shall be jurisdiction of the insurer, and that the insurer shall in all things be bound by and subject to the findings, judgments, and awards rendered against such insured.

SEC. 32. *Requirements in Insurance Policies.* No policy of insurance against liability under part B of this act, except as provided in section thirty, shall be made unless the same shall cover the entire liability of the employer thereunder and shall contain an agreement by the insurer that, in case the insured shall become insolvent or be discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid, or in case an execution upon a judgment for compensation is returned unsatisfied, an injured employee, or other person entitled to compensation under this act, may enforce his claim to compensation against the insurer to the same extent that the insured could have enforced his claim against such insurer had he paid compensation.

SEC. 33. *Obligations not to be Evaded.* No contract, expressed or implied, no rule, regulation, or other device, shall in any manner relieve any employer, in whole or in part, of any obligation created by this act, except as herein set forth.

SEC. 34. *Action for Minors.* When any employee affected by the provisions of this act, or any person entitled to compensation hereunder, shall be a minor, or mentally incompetent, his parent, or guardian duly appointed, may, on his behalf, perform any act or duty required or exercise any right conferred by this act with the same effect as if such person was legally capable to act in his own behalf and had so acted.

SEC. 35. *Fees to be Approved.* All fees of attorneys, physicians, or other persons for services under this act shall be subject to the approval of the commissioner.

SEC. 36. *Exemption and Preference of Compensations.* All sums due for compensation under this act shall be exempt from levy, attachment, and execution and shall be nonassignable before or after award. The rights of compensation granted by

this act shall have the same preference against the assets of an employer as may be allowed by law to a claim for unpaid wages.

SEC. 37. *Payments of Compensation.* Compensations payable under this act shall be paid at such particular times in the week and in such manner as the commissioner may order, and shall be paid directly to the persons entitled to receive them unless the commissioner, for good reason, shall order payment to those entitled to act for such persons.

SEC. 38. *Manner of Serving Notices.* Any notice under this act required to be served upon employer, employee, or commissioner may be served in the manner prescribed in section three of part B of this act, unless the circumstances of the case or the rules of the commission shall direct otherwise.

SEC. 39. *Custody of Forms.* The town clerks of the several towns are hereby authorized and directed to receive from the commission such blank forms as may be prepared for use under this act and to distribute the same to persons making proper application for them.

SEC. 40. *Interstate Commerce.* This act shall not affect the liability of employers to employees engaged in interstate or foreign commerce, for death or injury, in case the laws of the United States provide for compensation or for liability for such death or injury.

SEC. 41. *Previous Injuries and Actions.* The provisions of this act shall not apply to injuries or actions brought on account of injuries sustained before January 1, 1914.

SEC. 42. *Failure to Observe Act.* Any employer who has accepted part B of this act and who thereafter fails to conform to any of the provisions of section thirty of part B, shall thereby forfeit all benefits thereunder and shall be liable as if he had not accepted the same. Any such employer who shall fail to conform to any of the other provisions of part B shall be fined not more than one hundred dollars for each offense.

SEC. 43. *Definitions.* "Commissioner" shall mean that compensation commissioner, as constituted in this act, who has jurisdiction in the matter referred to in the context. "Commission" shall mean the five commissioners, or a majority of them, acting as a board. "Dependents" shall mean members of the injured employee's family or next of kin who were wholly or partly de-

pendent upon the earnings of the employee at the time of the injury. "Employee" shall mean any person who has entered into or works under any contract of service or apprenticeship with an employer. "Employer" shall mean any natural person, corporation, firm, partnership, or joint stock association, the state, and any public corporation within the state using the services of another for pay; it includes also the legal representative of any such employer. Masculine terms include males, females, and legal persons. "Outworker" shall mean a person to whom articles or materials are given to be treated in any way on premises not under the control or management of the person who gave them out. As the natural interpretation of the context may require, singular terms may be taken to include the plural, and plural to include the singular.

SEC. 44. *Unconstitutionality.* In case any provision of this act shall be held by the courts to be unconstitutional and invalid, the invalidity of such provision shall not affect any other provision which can be given effect without the provision held invalid.

### PART C. EMPLOYERS' MUTUAL INSURANCE

SECTION 1. *Mutual Associations Authorized.* With the approval of the insurance commissioner, employers who have accepted the provisions of part B of this act and are bound to pay compensations to their employees thereunder, may associate themselves, in accordance with the law for the formation of corporations without capital stock, for the purpose of establishing and maintaining mutual associations to insure their liabilities under this act, but no such association shall be formed to include employers not in the same or similar trade or business, or in trades or businesses with substantially similar degrees of hazard of injury to employees.

SEC. 2. *Approval by Insurance Commissioner.* With a view to his approval, the insurance commissioner may require the incorporators of any such association to include in their proposed certificate of incorporation such lawful provisions for the regulation of the affairs of the association and the definition of its powers and the powers of its officers, directors, and incorporators as shall satisfy him that it is well designed and wisely adapted

to its proposed purposes. When such a certificate, in form and substance acceptable to the insurance commissioner, has been approved by and filed with the secretary of the state, the incorporators shall forthwith cause copies thereof to be filed in the offices of the insurance commissioner and each of the compensation commissioners.

**SEC. 3. *Membership.*** Membership in such associations shall be limited to such employers as are subject to part B of this act, and each association shall have power, by appropriate by-laws, to provide for the admission, suspension, withdrawal, or expulsion of members.

**SEC. 4. *Control of Associations.*** Except as herein otherwise provided, such associations shall be subject to the same regulation and control as is or may be imposed by law upon other corporations or associations taking similar risks in this state, and over them the insurance commissioner shall have all the jurisdiction given him by chapter 186 of the public acts of 1909 over insurance companies.

**SEC. 5. *Policies.*** No policies shall be issued by any such association until members in such numbers and with such numbers of employees as the insurance commissioner may decide will give a fair diffusion of risks shall have obligated themselves to take policies immediately upon their authorization, nor shall any policies be issued except such as the insurance commissioner shall have approved as conforming in all respects to the requirements of this act. Conformably to the provisions of section thirty of part B of this act, policies may be issued covering claims only in excess of a certain amount. If at any time, by the retirement of members, reduction of numbers of employees, or other cause, the membership of any association shall appear to the insurance commissioner no longer to afford a fair diffusion of risks, he may suspend or forbid the further issue of policies until the former conditions of the association have been restored.

**SEC. 6. *Officers and Voting.*** The affairs of all associations incorporated under this act shall be managed by such officers and directors as may be chosen in manner prescribed by the by-laws of the association, provided every member shall be entitled to cast at least one ballot in all elections and votes, that any member having had for six months an average of more than one hundred and

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Connecticut

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not more than five hundred employ  s to whom he is bound to pay compensation under this act shall be entitled to cast two ballots, that each additional five hundred employees shall entitle such member to an additional ballot, and that no member shall be entitled to cast more than eight ballots.

SEC. 7. *Safety. Rules.* Each association shall have power to prescribe and enforce reasonable rules for safety regulations on the premises of its members, and for that purpose, its inspectors shall have free access to all such premises during regular working hours.

SEC. 8. *Premiums.* Each association shall have power to determine the comparative premium rates for each occupation or risk insured by it and to prescribe rates of cash premiums sufficient to cover the current cost. Said premium rates shall prevail for the fiscal year of the association, but annually they may be changed at any time by the directors. The current cost herein specified shall be such an amount as is estimated to cover the expenses and the claims or portions of claims payable within the same fiscal year within which they originated. Members of each association shall be required to pay yearly in advance cash premiums for current costs, and in addition thereto an amount in negotiable notes sufficient to maintain a reserve equal to that required of stock or commercial casualty companies by the general statutes for similar classes of risks. These notes shall be payable on the call of the treasurer of the association, as they may be required to meet estimated losses or expenses in excess of the current cost or to meet claims covering losses not payable within the same fiscal year within which the claim originated. The directors may, in their discretion, fix rates of interest on either notes or balances.

SEC. 9. *Assessments.* If an association is not possessed of funds sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, upon the members liable to assessment therefor, in proportion to their several liabilities.

SEC. 10. *Investments.* The funds of each association shall be invested by the directors in the same classes of securities and in the same manner in which the funds of domestic life insurance companies are by law required or permitted to be invested.



## Connecticut

SEC. 11. *By-laws and Regulations.* Each association shall have power to determine the premiums, contingent liabilities, assessments, penalties, and dividends of its members, and to enforce, or administer the same without the limitations imposed upon corporations without capital stock by section ninety of chapter 194 of the public acts of 1903. It shall also have power to make and amend by-laws or regulations not inconsistent with its certificate of incorporation for the prompt, economical, and safe conduct of its affairs. All by-laws and regulations of each association shall be filed with the insurance commissioner, and shall be subject to his approval. If not disapproved by him, they shall go into effect thirty days after filing, or at such later date as may be indicated in the by-laws or regulations.

SEC. 12. *Appeals to Superior Court.* From any decision or order of the insurance commissioner affecting any association, such association shall have the right of appeal to the superior court for Hartford county.

## GENERAL PROVISIONS

SEC. 13. *Acts Repealed.* All acts and parts of acts inconsistent with any provision of this act are hereby repealed to the extent of such inconsistency.

SEC. 14. *When effective.* So much of this act as directs the appointment of compensation commissioners and authorizes the formation of employers' mutual insurance associations shall take effect upon its passage; so much as empowers the commission to adopt and publish rules, procedure, and forms shall take effect October 1, 1913; all other provisions of this act shall take effect January 1, 1914.

Approved, May 29, 1913.

STATE OF CONNECTICUT,     }  
OFFICE OF THE SECRETARY,   } SS

I hereby certify that the foregoing is a true copy of record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Seal of said State, at Hartford, this 3rd day of June, A. D., 1913.

ALBERT PHILLIPS,  
*Secretary.*

## ILLINOIS

(L. 1913. p. 335)

AN ACT to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any employer in this State may elect to provide and pay compensation for accidental injuries sustained by any employé arising out of and in the course of the employment according to the provisions of this Act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided:

(a) Election by an employer to provide and pay compensation according to the provisions of this Act shall be made by the employer filing notice of such election with the industrial board.

(b) Every employer within the provisions of this Act who has elected to provide and pay compensation according to the provisions of this Act shall be bound thereby as to all his employees covered by this Act until January 1st of the next succeeding year and for terms of each year thereafter: *Provided*, any such employer may elect not to provide and pay the compensation herein provided for accidents resulting in either injury or death and occurring after the expiration of any such calendar year by filing notice of such election with the industrial board at least sixty days prior to the expiration of any such calendar year, and by posting such notice at a conspicuous place in the plant, shop, office, room, or place where such employee is employed, or by personal service, in written or printed form, upon such employee, at least sixty days prior to the expiration of any such calendar year.

(c) In the event any employer elects to provide and pay the

## Illinois

compensation provided in this Act, then every employee of such employer, as a part of his contract of hiring or who may be employed at the time of the taking effect of this Act and the acceptance of its provisions by the employer, shall be deemed to have accepted all the provisions of this Act and shall be bound thereby unless within thirty days after such hiring or after the taking effect of this Act, and its acceptance by the employer, he shall file a notice to the contrary with the industrial board, whose duty it shall be to immediately notify the employer, and if so notified, the employer shall not be deprived of any common law or statutory defenses existing but for this Act; and until such notice to the contrary is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this Act: *Provided, however,* that any employee may withdraw from the operation of this Act upon filing a written notice of withdrawal at least ten days prior to January 1st of any year with the industrial board, whose duty it shall be to immediately notify the employer by registered mail, and, if so notified, the employer shall not be deprived of any common law or statutory defenses existing but for this Act, and until such notice to the contrary is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this Act.

(d) Any employer or employee may, without prejudice to any existing right or claim, withdraw his election to reject this Act by giving thirty days' written notice in such manner and form as may be provided by the industrial board.

SEC. 2. Every employer enumerated in section 3, paragraph (b), shall be conclusively presumed to have filed notice of his election as provided in section 1, paragraph (a), and to have elected to provide and pay compensation according to the provisions of this Act, unless and until notice in writing of his election to the contrary is filed with the industrial board and unless and until the employer shall either furnish to his employee personally or post at a conspicuous place in the plant, shop, office, room or place where such employee is to be employed, a copy of said notice of election not to provide and pay compensation according to the provisions of this Act; which notice of non-election, if filed and posted as herein provided, shall be effective until

## Illinois

withdrawn; and such notice of non-election may be withdrawn as provided in this Act.

SEC. 3. (a) In any action to recover damages against an employer, engaged in any of the occupations, enterprises or businesses enumerated in paragraph (b) of this section, who shall elect not to provide and pay compensation to any employee, according to the provisions of this Act, it shall not be a defense, that: First, the employee assumed the risks of the employment; second, the injury or death was caused in whole or in part by the negligence of a fellow-servant; or third, the injury or death was proximately caused by the contributory negligence of the employee.

(b) The provisions of paragraph (a) of this section shall only apply to an employer engaged in any of the following occupations, enterprises or businesses, namely:

1. The building, maintaining, repairing or demolishing of any structure;

2. Construction, excavating or electrical work;

3. Carriage by land or water and loading and unloading in connection therewith;

4. The operation of any warehouse or general or terminal store houses;

5. Mining, surface mining or quarrying;

6. Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities;

7. In any enterprise wherein molten metal, or explosive or injurious gases or vapors, or inflammable vapors or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities;

8. In any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances, or for the protection and safeguarding of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra-hazardous.

SEC. 4. The term "employer" as used in this Act shall be construed to be:

*First*—The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

## Illinois

*Second*—Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious, or charitable corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, shall in the manner provided in this Act have elected to become subject to the provisions of this Act, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this Act.

SEC. 5. The term "employee" as used in this Act shall be construed to mean:

*First*—Every person in the service of the State, county, city, town, township, incorporated village or school district, body politic, or municipal corporations therein, under appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein; and except any employee thereof for whose accidental injury or death arising out of and in the course of his employment compensation or a pension shall be payable to him, his personal representative, beneficiaries or heirs, from any pension or benefit fund to which the State, or any county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein contributes in whole or in part: *Provided*, that one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein, through its representatives, shall not be considered as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

*Second*—Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors who are legally permitted to work under the laws of the State, who, for the purpose of this Act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees, but not including any person whose employment is but casual or who

## Illinois

is not engaged in the usual course of the trade, business, profession, or occupation of his employer: *Provided*, that employees shall not be included within the provisions of this Act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive.

SEC. 6. No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee other than the compensation herein provided shall be available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

SEC. 7. The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

(a) If the employee leaves any widow, child or children whom he was under legal obligation to support at the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand five hundred dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under paragraph (a) of this section and the employee leaves any widow, child, parent, grandparent or other lineal heir, to whose support he had contributed within four years previous to the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand five hundred dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(c) If no amount is payable under paragraph (a) or (b) of this section and the employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided in paragraph (a) of this section as the average annual contributions which the deceased made to the support of such collateral dependent heirs during the two

## Illinois

years preceding the injury bears to his earnings during such two years.

(d) If no amount is payable under paragraph (a) or (b) or (c) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses.

(e) All compensation except for burial expenses, provided for in this section to be paid in case injury results in death, shall be paid in installments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or if this shall not be feasible, then the installments shall be paid weekly: *Provided*, such compensation may be paid in a lump sum upon petition as provided in section 9 of this Act.

(f) The compensation to be paid for injury which results in death, as provided in this section, shall be paid at the option of the employer either to the personal representative of the deceased employee or to his beneficiaries, and shall be distributed to the heirs who formed the basis for determining the amount of compensation to be paid by the employer, the distributees' shares to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased, provided that, in the judgment of the court appointing the personal representative, a child's distributive share may be paid to the parent for the support of the child. The payment of compensation by the employer to the personal representative of the deceased employee shall relieve him of all obligation as to the distribution of such compensation so paid. The distribution by the personal representative of the compensation paid to him by the employer shall be made pursuant to the order of the court appointing him.

SEC. 8. The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

(a) The employer shall provide necessary first aid medical, surgical and hospital services; also medical, surgical and hospital services for a period not longer than eight weeks, not to exceed, however, the amount of \$200.00. The employee may elect to secure his own physician, surgeon or hospital services at his own expense.

(b) If the period of temporary total incapacity for work lasts for more than six working days, compensation equal to one-half

## Illinois

the earnings, but not less than \$5.00 nor more than \$12.00 per week, beginning on the eighth day of such temporary total incapacity, and continuing as long as the temporary total incapacity lasts, but not after the amount of compensation paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7.

(c) For any serious and permanent disfigurement to the hands, head or face, the employee shall be entitled to compensation for such disfigurement, the amount to be fixed by agreement or by arbitration in accordance with the provisions of this Act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7, provided that no compensation shall be payable under this paragraph where compensation is payable under paragraphs (d), (e), or (f) of this section.

(d) If, after the injury has been sustained, the employee as a result thereof becomes partially, though permanently incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to one-half of the difference between the average amount which he earned before the accident, and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. In the event the employee returns to the employment of the employer in whose service he was injured, the employee shall not be barred from asserting a claim for compensation under this Act, provided notice of such claim is filed with the industrial board within eighteen months after he returns to such employment, and the said board shall immediately send to the employer, by registered mail, a copy of such notice.

(e) For injuries in the following schedule, the employee shall receive in addition to compensation during the period of temporary total incapacity for work resulting from such injury, in ac-



## Illinois

cordance with the provisions of paragraphs (a) and (b) of this section, compensation, for a further period, subject to the limitations as to time and amounts fixed in paragraphs (b) and (h) of this section, for the specific loss herein mentioned, as follows, but shall not receive any compensation under any other provision of this act.

For the loss of a thumb, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during sixty weeks.

For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during thirty-five weeks.

For the loss of a second finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wages during thirty weeks.

For the loss of a third finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during twenty weeks.

For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: *Provided, however,* that in no case shall the amount received for more than one finger exceed the amount provided in this section for the loss of a hand.

For the loss of the great toe, fifty per centum of the average weekly wage during thirty weeks.

For the loss of one or more of the toes other than the great toe, fifty per centum of the average weekly wage during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, or the permanent and complete loss of

## Illinois

its use, fifty per centum of the average weekly wage during one hundred and fifty weeks.

For the loss of an arm, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during two hundred weeks.

For the loss of a foot, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during one hundred and twenty-five weeks.

For the loss of a leg, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during one hundred and seventy-five weeks.

For the loss of the sight of an eye, fifty per centum of the average weekly wage during one hundred weeks.

The loss of both hands or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this section, provided that these specific cases of total and permanent disability shall not be construed as excluding other cases.

(f) In the case of complete disability which renders the employee wholly and permanently incapable of work, compensation equal to 50 per cent of his earnings, but not less than \$5.00, nor more than \$12.00 per week, commencing on the day after the injury and continuing until the amount paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7, and thereafter a pension during life annually equal to 8 per cent of the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7. Such pension shall not be less than \$10.00 per month and shall be payable monthly.

(g) In case death occurs as a result of the injury before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child or children, parents, grandparents, or other lineal heirs entitled to compensation under section 7, the difference between the com-

## Illinois

pensation for death and the sum of the payments made to the employee shall be paid, at the option of the employer, either to the personal representative or the beneficiaries of the deceased employee and distributed, as provided in paragraph (f) of section 7, but in no case shall the amount payable under this paragraph be less than \$500.00.

(h) In no event shall the compensation to be paid exceed fifty per centum of the average weekly wage or exceed twelve dollars per week in amount; nor, except in cases of complete disability as defined above, shall any payments extend over a period of more than eight years from the date of the accident. In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this Act, a conservator or guardian may be appointed pursuant to law, and may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this Act provided shall run so long as said incompetent employee is without a conservator or guardian.

(i) All compensation provided for in paragraphs (b), (c), (d), (e) and (f) of this section, other than cases of pension for life, shall be paid in installments, at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly.

SEC. 9. Any employer or employee or beneficiary, who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the industrial board, asking that such compensation be so paid, and if upon proper notice to the interested parties and a proper showing made before such board, it appears to the best interest of the parties that such compensation be so paid, the board shall order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rest: *Provided*, that in cases indicating complete disability no petition for a commutation to a lump sum basis shall be entertained by

## Illinois

the industrial board until after the expiration of six months from the date of the injury, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this Act, and liable to pay such compensation, may petition for the appointment of the public administrator, or a conservator, or guardian where no legal representative has been appointed or is acting for such party or parties so under disability: *Provided, further*, that if the amount awarded as a lump sum settlement is not satisfactory to either party, such party may reject the same within ten days after notice of the award by filing his written rejection thereof with the said board in which event compensation shall be payable in installments as herein provided.

SEC. 10. The basis for computing the compensation provided for in sections 7 and 8 of the Act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employé was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location, (or if that be impracticable, of neighboring employments of the same kind) have earned during such period.

(d) As to employees in employments in which it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise

## Illinois

determinable, shall be used instead of 300 as a basis for computing the annual earnings, provided the minimum number of days which shall be so used for the basis of the year's work shall be not less than 200.

(f) In the case of injured employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earnings of adults of the same class in the same (or if that is impracticable, then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this Act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and such amount divided by the number of installment periods per annum.

SEC. 11. The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this act.

SEC. 12. An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself at the expense of the employer for examination to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably convenient for the employee, as soon as practicable after the injury, and also one week after the first examination, and thereafter at intervals not oftener than once every four weeks, which examination shall be for the pur-

## Illinois

pose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provisions of this Act: *Provided, however*, that such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee if such employee so desires. If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period.

SEC. 13. There is hereby created a board which shall be known as the industrial board, to consist of three members to be appointed by the Governor, by and with the consent of the Senate, one of whom shall be a representative citizen of the employing class operating under this Act, and one of whom shall be a representative citizen chosen from among the employees operating under this Act, and one of whom shall be a representative citizen not identified with either the employing or employee classes, and who shall be designated by the Governor as chairman. Appointment of members to places on the first board, or to fill vacancies on said board may be made during recesses of the Senate, but shall be subject to confirmation by the Senate at the next ensuing session of the Legislature. The term of office of members of this board shall be six years, except that when first constituted one member shall be appointed for two years, one for four years, and one for six years. Thereafter one member shall be appointed every second year for the full term of six years. Not more than two members of the board shall belong the same political party.

SEC. 14. The salary of each of the members of the board so appointed by the Governor shall be four thousand dollars per year. The board shall appoint a secretary and shall employ such assistants and clerical help as may be necessary. The board shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words, "Industrial Board—Illinois—seal."

SEC. 15. The industrial board shall have jurisdiction over the operation and administration of this Act, and said board shall per-

## Illinois

form all the duties imposed upon it by this Act, and such further duties as may hereafter be imposed by law and the rules of the board not inconsistent therewith.

SEC. 16. The board may make rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed *prima facie* reasonable and valid; and the process and procedure before the board shall be as simple and summary as reasonably may be. The board or any member thereof shall have the power to administer oaths, subpoena and examine witnesses, and to examine and inspect such books, papers and records, places or premises as may relate to questions in dispute.

SEC. 17. The board shall cause to be printed and furnish free of charge upon request by any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act, and the performance of the duties of the board; it shall provide a proper record in which shall be entered and indexed the name of any employer who shall file a notice of declination or withdrawal under this Act, and the date of the filing thereof; and a proper record in which shall be entered and indexed the name of any employee who shall file such a notice of declination or withdrawal, and the date of the filing thereof; and such other notices as may be required by the terms and intendment of this Act; and records in which shall be recorded all proceedings, orders and awards had or made by the board, or by the arbitration committees, and such other books or records as it shall deem necessary, all such records to be kept in the office of the board.

SEC. 18. All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the industrial board.

SEC. 19. Any disputed questions of law or fact upon which the employer and employee or personal representative cannot agree, shall be determined as herein provided.

(a) It shall be the duty of the industrial board, upon notification that the parties have failed to reach an agreement, to notify both parties to appoint their respective representatives on a committee of arbitration. The board shall designate one of its members or an agent appointed by it and at its expense to act as chairman, and if either party fails to appoint its member on the

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Illinois

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committee within seven days after notification as above provided, the board shall appoint a person to fill the vacancy and notify the parties to that effect, and the reasonable expenses of the person so appointed to fill the vacancy shall, after approval by the board, be taxed as costs against the party who failed to appoint its member on such committee.

(b) The committee of arbitration shall make such inquiries and investigations as it shall deem necessary, and may examine and inspect all books, papers, records, places or premises relating to the questions in dispute. The hearings of the committee shall be held in the vicinity where the injury occurred, after ten days' notice of the time and place of such hearing shall have been given to each of the parties, and the decision of the committee shall be filed with the industrial board, which board shall immediately send to each party a copy of such decision, together with a notification of the time when it was filed, and unless a petition for a review is filed with the board by either party within fifteen days after the receipt by said party of the copy of such decision and notification of time when filed, and unless such party petitioning for review shall, within twenty days of the filing of such decision, file with the board either an agreed statement of the facts appearing upon the hearing before the committee of arbitration, or, if such party shall so elect, a correct stenographic report of the proceedings at such hearing, then the decision shall be entered of record as the decision of the industrial board. *Provided*, that such industrial board may, for sufficient cause shown, grant further time in which to petition for such review or to file such agreed statement or stenographic report. An agreed statement of facts or correct stenographic report, as the case may be, shall be authenticated by the signatures of the parties or their attorneys and in the event they do not agree as to the correctness of the stenographic report it shall be authenticated by the signature of the chairman of the committee of arbitration.

(c) The industrial board may appoint, at its expense, a duly qualified, impartial physician, to examine the injured employee and report to the board. The fee for this service shall not exceed five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases. The fees and the payment thereof of all attorneys and physicians for serv-



ices authorized by the board under this Act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the industrial board.

(d) If any employee shall persist in unsanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may, in its discretion, reduce, or suspend the compensation of any such injured employee.

(e) If a petition for review, and agreed statement of facts or stenographic report is filed, as provided herein, the industrial board shall promptly review the decision of the committee of arbitration and the facts as they appear from the said statement of facts or stenographic report, and shall also, if desired, hear the parties, together with such additional evidence as they may wish to submit. After such hearing upon review, the board shall announce and file in its office its decision thereon and shall immediately send to each party a copy of such decision, together with a notification of the time when it was filed. Such review and hearing may be held in its office, or elsewhere, as the board shall deem advisable. Any party may, within twenty days of the receipt by it of notice of the board's decision or within such further time as the board may grant, file with the board either an agreed statement of the facts appearing upon the hearing, or, if such party shall so elect, a correct stenographic report of the proceedings at the hearing, such statement of facts or stenographic report to be authenticated by the signatures of the parties or their attorneys, and in the event they do not agree then the authentication shall be by the signature of the chairman of the board. The statement of facts or stenographic report of the proceedings on the hearings before either the committee of arbitration or the industrial board shall upon filing as hereinbefore provided, become part of the record of the proceedings of said board.

(f) The decision of the industrial board, acting within its powers, according to the provisions of paragraph (e) of this section, and of the committee of arbitration, where no review is had and its decision becomes the decision of the industrial board in accordance with the provisions of this section, shall, in the absence

## Illinois

of fraud be conclusive, but the Supreme Court shall have power to review questions of law involved in any such decision: *Provided*, that application is made by the aggrieved party within thirty days after notice given to him of such decision or within thirty days after the expiration of the time allowed for filing the agreed statement of facts or stenographic report with said board, by certiorari, mandamus or by any other method permissible under the rules and practices of said court or the laws of this State.

The decision of any two members of a committee of arbitration, or of the industrial board, shall be considered the decision of such committee or board, respectively.

(g) Either party may present a certified copy of the decision of the industrial board, when no proceedings for review thereof have been taken, or of the decision of such committee of arbitration when no claim for review is made, or of the decision of the industrial board after hearing upon review, providing for the payment of compensation according to this Act, to the circuit court of the county in which such accident occurred, whereupon such court shall render a judgment in accordance therewith; and in cases where the employer does not institute proceedings for review of the decision of the industrial board and refuses to pay compensation according to the award upon which such judgment is entered, the court shall, in entering judgment thereon, tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment, for the person in whose favor the judgment is entered; which judgment, and costs, taxed as herein provided, shall, until and unless set aside, have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed. The circuit court shall have power at any time, upon application, to make any such judgment conform to any modification required by any subsequent decision of the Supreme Court upon appeal, or as the result of any subsequent proceedings for review as provided in this Act.

Judgment shall not be entered until fifteen days' notice of the time and place of the application for the entry of judgment shall be served upon the employer by filing such notice with the industrial board; which board shall, in case it has on file the address of the employer or the name and address of its agent upon

whom notices may be served, immediately send a copy of the notice to the employer or such designated agent; and no judgment shall be entered in the event the employer shall file with the said board its bond with good and sufficient surety in double the amount of the award conditioned upon the payment of said award in the event the said employer shall fail to prosecute with effect proceedings for review of the decision or the said decision upon review shall be affirmed.

(h) An agreement or award under this Act, providing for compensation in installments, may at any time within eighteen months after such agreement or award, be reviewed by the industrial board at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended; and on such review compensation payments may be re-established, increased, diminished or ended: *Provided*, that the board shall give fifteen days' notice to the parties of the hearing for review: *And, provided, further*, any employee, upon any petition for such a review being filed by the employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearings of the board upon said petition, and three days' in addition thereto, and such employee shall, at the discretion of the board, also be entitled to five cents per mile necessarily traveled by him in attending such hearing, not to exceed a distance of 300 miles, to be taxed by the board as costs and deposited with the petition of the employer.

(i) Each party, upon taking any proceedings or steps whatsoever, before any committee of arbitration, industrial board or court, shall file with the industrial board his address or the name and address of an agent upon whom all notices to be given to such party shall be served either personally or by registered mail addressed to such party or agent at the last address so filed with the industrial board: *Provided*, that in the event such party has not filed his address or the name and address of an agent as above provided, service of any notice may be had by filing such notice with the industrial board.

SEC. 20. The industrial board shall report in writing to the Governor on the 30th day of June, annually, the details and results of its administration of this Act, in accordance with the

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Illinois

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terms of this Act, and may prepare and issue such special bulletins and reports from time to time as in the opinion of the board seems advisable.

SEC. 21. No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. In case of insolvency of the employer, every decision of the industrial board for compensation under this Act shall, upon the filing of a certified copy of the decision with the recorder of deeds of a county, constitute a lien upon all property of the employer within said county, paramount to all other claims, or liens except for wages and taxes, and mortgages or trust deeds and such liens shall be enforced by order of the court. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this Act relative to compensation for death received in the course of employment.

SEC. 22. Any contract or agreement made by any employer or his agent or attorney with any employee or any other beneficiary of any claim under the provisions of this Act within seven days after the injury shall be presumed to be fraudulent.

SEC. 23. No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the industrial board.

SEC. 24. No proceedings for compensation under this Act shall be maintained unless notice of the accident has been given the employer as soon as practicable, but not later than 30 days after the accident. In cases of mental incapacity of the employee, notice must be given within six months after such accident. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings by arbitration or otherwise by the employee, unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the accident shall in substance apprise the employer of the claim of compensation made and shall state the name and address of the employee injured, the approximate date and place of the accident, if known, and in simple language the cause thereof; which notice

## Illinois

may be served personally or by registered mail, addressed to the employer at his last known residence or place of business: *Provided*, that the failure on the part of any person entitled to such compensation to give such notice shall not relieve the employer from his liability for such compensation, when the facts and circumstances of such accident are known to such employer, his agent or vice principal in the enterprise. No proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, or in the event that payments have been made under the provisions of this Act, unless written claim for compensation has been made, within six months after such payments have ceased.

SEC. 25. Any employer against whom liability may exist for compensation under this Act may, with the approval of the industrial board, be relieved therefrom by:

(a) Depositing the commuted value of the total unpaid compensation for which such liability exists, computed at three per centum per annum in the same manner as provided in section 9, with the State Treasurer, or county treasurer in the county where the accident happened, or with any State or national bank or trust company doing business in this State, or in some other suitable depository approved by the industrial board: *Provided*, that any such depository to which such compensation may be paid shall pay the same out in installments as in this Act provided, unless such sum is ordered paid in, and is commuted to, a lump sum payment in accordance with the provision of this Act.

(b) By the purchase of an annuity, in an amount of compensation due or computed, under this Act within the limitation provided by law, in any insurance company granting annuities and licensed or permitted to do business in this State, which may be designated by the employer, or the industrial board.

SEC. 26. (a) An employer who elects to provide and pay the compensation provided for in this Act shall within ten (10) days of receipt by the employer of a written demand by the industrial board (1) file with the board a sworn statement showing his financial ability to pay the compensation provided for in this Act, normally required to be paid, or (2) furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, normally required to be paid,

## Illinois

or (3) insure to a reasonable amount his normal liability to pay such compensation in some corporation, association or organization authorized, licensed or permitted to do such insurance business in this State, or (4) make some other provision for the securing of the payment of compensation provided for in this Act, normally required to be paid, and shall within twenty (20) days of the receipt of such written demand furnish to the board evidence of his compliance with one of the above alternatives: *Provided*, that the sworn statement of financial ability, or security, indemnity or bond, or amount of insurance or other provision, filed, furnished, carried or made by the employer, as the case may be, shall be subject to the approval of the board, upon the approval of which the board shall send to the employer written notice of its approval thereof: And, provided, further, that demand shall not be made upon the employer by the board oftener than once in any calendar year.

(b) If no sworn statement or no security, indemnity or bond, or no insurance is filed, furnished or carried, or other provision made by the employer within ten (10) days of receipt by the employer of the written demand provided for in paragraph (a), or if the statement, security, indemnity, bond or amount of insurance filed, furnished or carried, or other provision made by the employer, as provided in paragraph (a), shall not be approved by the board, and written notice of such non-approval shall be given to the employer and the employer shall not comply with one of the alternatives of paragraph (a) of this section within ten (10) days after the receipt by the employer of such written notice of non-approval, then the employer shall be liable for compensation to any injured employee or his personal representative, according to the terms of this Act, or for damages in the same manner as if the employer had elected not to accept this Act, at the option of such employee or his personal representative: *Provided*, such option is exercised and written notice thereof is given to the employer within thirty (30) days after the accident to such employee, otherwise the employer shall be liable only for the compensation payable according to the provisions of this Act: And, provided, further, that if at any time thereafter the employer shall comply with any of the alternatives of paragraph (a), then as to all accidents occurring after the said compliance, the employer shall

only be liable for compensation according to the terms of this Act.

(c) "Normal liability" and "normally required to be paid," whenever used herein, shall be measured by the experience, if any, of the said employer during the two years preceding the demand by the board, and if there is no such individual basis of experience, then by the general experience in the same industry, business, occupation or enterprise in the same neighborhood during the same period.

SEC. 27. (a) This Act shall not effect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: *Provided*, the employer contributes to such association or department an amount not less than the full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(b) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained, be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(c) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this Act shall be null and void, and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punish-

able by a fine of not less than ten dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

SEC. 28. Any person, who shall become entitled to compensation under the provisions of this Act, shall, in the event of his inability to recover such compensation from the employer on account of his insolvency, be subrogated to all the rights of such employer against any insurance company, association or insurer which may have insured such employer against loss growing out of the compensation required by the provisions of this Act to be paid by such employer, and, in such event only, the said insurance company, association, or insurer shall become primarily liable to pay to the employee or his personal representative the compensation required by the provisions of this Act to be paid by such employer.

SEC. 29. Where an injury or death for which compensation is payable by the employer under this Act was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to be bound by this Act, then the right of the employee or personal representative to recover against such other person shall be subrogated to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained, in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the injury or death of such employee. Where the injury or death for which compensation is payable under this Act was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by this Act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act, but in such case if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the



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Illinois

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amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative, provided that if the injured employee or his personal representative shall agree to receive compensation from the employer or to institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employee or personal representative and may maintain, or in case an action has already been instituted, may continue an action either in the name of the employee or personal representative or in his own name against such other person for a recovery of damages to which but for this section the said employee or personal representative would be entitled, but such employer shall nevertheless pay over to the injured employee or personal representative all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act and all costs, attorney's fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability.

SEC. 30. It shall be the duty of every employer within the provisions of this Act to send to the industrial board in writing an immediate report of all accidental injuries arising out of or in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and the 25th of each month to the industrial board all accidental injuries for which compensation has been paid under this Act, which injuries entail a loss to the employee of more than one week's time, and in case the injury results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the character of the injury, the length of disability, and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured

## Illinois

person, or to his legal representative or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall release the employer covered by the provisions of this Act from making such reports to any other officer of the State.

SEC. 31. Any person, firm or corporation, who undertakes to do or contracts with others to do, or have done for him, them or it, any work enumerated as extra-hazardous in paragraph (b) in section 3, requiring employment of employees in, on or about the premises where he, they or it as principal or principals, contract to do such work or any part thereof, and does not require of the person, firm or corporation undertaking to do such work for said principal or principals, that such person, firm or corporation undertaking to do such work shall insure his, their or its liability to pay the compensation provided in this Act to his, their or its employees and any such person, firm or corporation who creates or carries into operation any fraudulent scheme, artifice or device to enable him, them or it to execute such work without such person, firm or corporation being responsible to the employee, his personal representative or beneficiary entitled to such compensation under the provisions of this Act, such person, firm or corporation shall be included in the term "employer" and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of this Act.

SEC. 32. No right of action for damages, at common law or under any other statute, existing at the time of the taking effect of this Act, shall be affected by this Act.

If the provisions of this Act relating to compensation for injuries to or death of employees shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal or final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury.

## Illinois

Any claim, disagreement or controversy existing or arising under an Act to promote the general welfare of the people of this State, by providing compensation for accidental injuries or death suffered in the course of employment, approved June 10, 1911, in force May 1, 1912, shall be adjusted in accordance with the provisions of said Act, notwithstanding the repeal thereof, or may by agreement of the parties be adjusted in accordance with the method of procedure provided in this Act for the adjustment of differences, jurisdiction to adjust such differences so submitted by the parties being hereby conferred upon the industrial board or committee of arbitration provided for in this Act.

SEC. 33. Any wilful neglect, refusal, or failure to do the things required to be done by any section, clause, or provision of this Act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of this Act, shall be deemed a misdemeanor, punishable by a fine of not less than \$10.00 nor more than \$500.00, at the discretion of the court.

SEC. 34. The invalidity of any portion of this Act shall in no way affect the validity of any other portion thereof which can be given effect without such invalid part.

SEC. 35. That an act to promote the general welfare of the State of Illinois by providing compensation for accidental injuries or death suffered in the course of employment, approved June 10, 1911, in force May 1, 1912, be, and the same is hereby repealed.

Approved June 28, 1913.

## STATE OF ILLINOIS

## DEPARTMENT OF STATE

HARRY WOODS, *Secretary of State*

*To All to Whom These Presents Shall Come, Greeting:*

I, HARRY WOODS, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true

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Illinois

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copy of an act entitled "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912," approved June 28, 1913, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the great Seal of State.

[SEAL] Done at the City of Springfield this 1st day of July  
A. D. 1913.

HARRY WOODS,  
*Secretary of State*

## IOWA

(L. 1913, c.     )

AN ACT relating to employers' liability for personal injury sustained by employes in line of duty, fixing compensation therefor, securing the payment thereof, providing for the appointment of a commissioner and defining his duties.

*Be it enacted by the General Assembly of the State of Iowa:*

SECTION 1. (a) Except as by this act otherwise provided, it shall be conclusively presumed that every employer as defined by this act has elected to provide, secure and pay compensation according to the terms, conditions, and provisions of this act for any and all personal injuries sustained by an employé arising out of and in the course of the employment; and in such cases the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury, unless by the terms of this act otherwise provided; but this act shall not apply to any household or domestic servant, farm or other laborer engaged in agricultural pursuits, nor persons whose employment is of a casual nature.

(b) Where the state, county, municipal corporation, school district, cities under special charter and commission form of government is the employer, the terms, conditions and provisions of this act for the payment of compensation and amount thereof for such injury sustained by an employé of such employer shall be exclusive, compulsory and obligatory upon both employer and employé.

(c) An employer having the right under the provisions of this act to elect to reject the terms, conditions and provisions thereof and in such case exercises the right in the manner and form by this act provided, such employer shall not escape liability for personal injury sustained by an employé of such employer when the injury sustained arises out of and in the usual course of the employment because:

(1) The employé assumed the risks inherent in or incidental to

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Iowa

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or arising out of his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employ  s in the business:

(2) That the injury was caused by the negligence of the co-employ  .

(3) That the employ   was negligent unless and except it shall appear that such negligence was wilful and with intent to cause the injury; or the result of intoxication on the part of the injured party.

(4) In actions by an employ   against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employ   was the direct result and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence.

Every such employer shall be conclusively presumed to have elected to provide, secure and pay compensation to employ  s for injuries sustained arising out of and in the course of the employment according to the provisions of this act, unless and until notice in writing of an election to the contrary shall have been given to the employ  s by posting the same in some conspicuous place at the place where the business is carried on, and also by filing notice with the Iowa industrial commissioner with return thereon by affidavit showing the date that notice was posted as by this act provided. Provided, however, that any employer beginning business after the taking effect of this act and giving notice at once of his desire not to come under the provisions of this act, shall not be considered as under the act. Provided, however, that such employer shall not be relieved of the payment of compensation as by this act provided until thirty days after the filing of such notice with the Iowa industrial commissioner, which notice shall be substantially in the following form:

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Iowa

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**EMPLOYERS' NOTICE TO REJECT**

*To the employés of the undersigned, and the Iowa Industrial Commissioner:*

You and each of you are hereby notified that the undersigned rejects the terms, conditions and provisions to provide, secure and pay compensation to employés of the undersigned for injuries received as provided in the acts of the ( ) general assembly known as chapter ( ) and elects to pay damages for personal injuries received by such employé under the common law and statutes of this state modified by sub-divisions one, two, three and four of section one, chapter ( ) of the acts of the ( ) general assembly and acts amendatory thereto.

Signed

State of Iowa,

County. ss.

The undersigned being first duly sworn deposes and says that a true, correct and verbatim copy of the foregoing notice was on the       day of       , 19       posted at  
(State fully place where posted.)

Subscribed and sworn to before me by  
this       day of       , 19       .

**Notary Public.**

The employer shall keep such notice posted in some conspicuous place which shall apply to the employés subsequently employed by the employer with the same force and effect and to the same extent and in like manner as employés in the employ at the time the notice was given.

Where the employer and employé have not given notice of an election to reject the terms of this act, every contract of hire express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employé to accept compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of the employment.

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Iowa

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SEC. 2. No compensation under this act shall be allowed for an injury caused:

(a) By the employé's wilful intention to injure himself or to wilfully injure another; nor shall compensation be paid to an injured employé if injury is sustained where intoxication of the employé was the proximate cause of the injury.

SEC. 3. (a) The rights and remedies provided in this act for an employé on account of an injury shall be exclusive of all other rights and remedies of such employé, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; and all employés affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this act until notice in writing shall have been served upon his employer; and also on the Iowa industrial commissioner, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(b) In the event such employé elects to reject the terms, conditions and provisions of this act, the rights and remedies thereof shall not apply where an employé brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this act; and in such actions where the employé has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow-servant shall apply and be available to the employer as by statute authorized unless otherwise provided in this act. Provided, however, that if an employé sustains an injury as the result of the employer's failure to furnish or failure to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violation of any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employés, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employé shall be substantially in the following form:



## EMPLOYÉ'S NOTICE TO REJECT

To \_\_\_\_\_ and the Iowa

(name of employer)

industrial commissioner:

You and each of you are hereby notified that the undersigned hereby elects to reject the terms, conditions and provisions of an act for the payment of compensation as provided by the acts of the ( ) general assembly and acts amendatory thereto, and elects to rely upon the common law as modified by section three of the acts of the ( ) general assembly for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 .  
Signed

State of Iowa, }  
County. } ss:

The undersigned being first duly sworn deposes and says that the written notice was on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ served on the within named employer of the undersigned by delivering to \_\_\_\_\_ a true, correct and verbatim (name of person served.) copy thereof.

Subscribed and sworn (or affirmed) to before me by the said  
this \_\_\_\_\_ day of \_\_\_\_\_, 19 .

Notary Public.

In any case where an employé or one who is an applicant for employment elects to reject the terms, conditions, and provisions of this act, he shall, in addition to the notice required by subdivision (b) of section 3 of this act, state in an affidavit to be filed with said notice who, if any, person, requested, suggested, or demands of such person to exercise the right to reject the provisions of this act. And if request, suggestion, or demand has been made of such employé by any person, such employé shall give and

## Iowa

state the name of the person who made the request, suggestion, or demand, and all of the circumstances relating thereto, the date and place when and where made, and persons present, and if it be found that the employer of such employé, or an employer to whom an applicant for employment, or any person a member of the firm, association, corporation, or agent or official of such employer, made a request, suggestion, or demand of such employé or applicant for employment to reject the terms, conditions and provisions of this act, such request, suggestion, or demand if made under such conditions, shall be conclusively presumed to have been sufficient to have unduly influenced such employé or an applicant for employment to exercise the right to reject the terms of this act, and the rejection made under such circumstances shall be conclusively presumed to have been procured through fraud and thereby fraudulently procured, and such rejection shall be null and void and of no effect.

No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affidavit required in case an employé or applicant for employment elects to exercise the right to reject the provisions of this act. And the person administering such oath in making such affidavit, shall carefully read the notice and affidavit to such person making such rejection, and shall explain that the purpose of the notice is to bar such person from recovering compensation in accordance with the schedule and terms of this act in the event that he sustains an injury in the course of such employment. All of which shall be shown by certificate of the person administering the oath herein contemplated. The Iowa industrial commissioner, or any person acting for such commissioner, shall refuse to file the notice and affidavit, unless such notice, affidavit and certificate fully, and in detail, comply with the requirements hereof. And if such rejection, affidavit and certificate is found insufficient for any cause, shall be returned by mail or otherwise to the person who executed the instrument.

SEC. 4. (a) When the employer or employé has given notice in compliance with this act electing to reject the terms thereof such election shall continue and be in force until such employer or employé shall thereafter elect to come under the provisions of this act as is provided in sub-division (b) of this section.

## Iowa

(b) When an employer or employé rejects the terms, conditions or provisions of this act, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of the act and which shall become effective when filed with the Iowa industrial commissioner.

SEC. 5. Where the employer and employé elect to reject the terms, conditions and provisions of this act, the liability of the employer shall be the same as though the employé had not rejected the terms, conditions and provisions thereof.

SEC. 6. An employer having come under this act, who thereafter elects to reject the terms, conditions and provisions thereof, shall not be relieved from the payment of compensation to such employé who sustains an injury in the course of the employment before the election to reject becomes effective; and in such cases the employer shall be required to secure the payment of any compensation due or that may become due to such workman, subject to the approval of the Iowa industrial commissioner.

SEC. 7. Where an employé coming under the provisions of this act receives an injury for which compensation is payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof.

(a) The employé or beneficiary may take proceedings both against that person to recover damages and against the employer for compensation, but the amount of the compensation to which he is entitled under this act shall be reduced by the amount of damages recovered.

(b) If the employé or beneficiary in such case recovers compensation under this act, the employer by whom the compensation was paid or the party who has been called upon to pay the compensation, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employé to recover therefor.

SEC. 8. No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided.

SEC. 9. Unless the employer or representative of such employer shall have actual knowledge of the occurrence of an injury,

Iowa

or unless the employé or some one on his behalf, or some of the dependents or some one on their behalf, shall give notice thereof to the employer within fifteen days of the occurrence of the injury, then no compensation shall be paid until and from the date such notice is given or knowledge obtained; but if notice is given or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. Provided, that if the employé or beneficiary shall show that his failure to give prior notice was due to mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another or to any other reasonable cause or excuse, then compensation may be allowed, unless and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Provided, further, unless knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed. No form of notice shall be required but may substantially conform to the following form:

FORM OF NOTICE

To.....

You are hereby notified that on or about the.....day of  
....., 19.., personal injury was sustained by .....  
..... while in your employ at ..... (Give  
name of place employed and point where located when injury occurred and that compensation will be claimed therefor.)

Signed.....

but no variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employé by name, received an injury in the course of his employment on or about a specified time at or near a certain place. Notice served upon one upon whom an original notice may be served in civil cases shall be a compliance with this act.

The notice required to be given to the employer may be served by any person over sixteen years of age, who shall make return upon a copy of the notice, properly sworn to, showing the date of service where and upon whom served, but no special form of the

return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time.

SEC. 10. If any employé has not given notice to reject the terms, conditions and provisions of this act, or has given such notice and waived the same as by this act provided, and the employer has not rejected the terms, condition, and provisions of the act or has given such notice and waived the same and the employé receives a personal injury arising out of and in the course of the employment, compensation shall be paid as herein provided.

(a) The compensation provided for in this act shall be paid in accordance with the schedule unless otherwise provided.

(b) At any time after an injury and until the expiration of two weeks of incapacity, the employer, if so requested by the workman, or any one for him, or if so ordered by the court or Iowa industrial commissioner, shall furnish reasonable surgical, medical and hospital services and supplies, not exceeding one hundred (\$100.00) dollars.

(c) Where the injury causes death the compensation under this act shall be as follows:

The employer shall in addition to any other compensation pay the reasonable expense of the employé's last sickness and burial not to exceed one hundred (\$100.00) dollars. If the employé leaves no dependents this shall be the only compensation.

(d) If death results from the injury, the employer shall pay the dependents of the employé wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to fifty (50%) per cent of his average weekly wages, but not more than (\$10.00) dollars nor less than five (\$5.00) dollars per week for a period of three hundred (300) weeks.

(e) If the employé leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employé to such partial dependents bear to the annual earnings of the deceased at the time of the injury. When weekly payments have been made to an injured employé before his death, the compensa-

## Iowa

tion to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred (300) weeks from the date of the injury.

(f) Where injury causes death to an employé, a minor, whose earnings were received by the parent, the compensation to be paid the parent shall be two-thirds (2-3) of the amount provided for payment in sub-division "D" section "10."

(g) No compensation shall be paid for an injury which does not incapacitate the employé for period of at least two weeks from earning full wages; but if incapacity extends beyond a period of two weeks, compensation shall begin on the fifteenth day after the injury.

(h) For injury producing temporary disability, fifty (50%) per cent of the average weekly wages received at the time of injury, subject to a maximum compensation of ten (\$10.00) dollars and a minimum of five (\$5.00) dollars per week; provided, that if at the time of injury the employé receives wages less than five (\$5.00) dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred (300) weeks.

(i) For disability total in character and permanent in quality fifty (50%) per cent of the average weekly wages received at the time of the injury, subject to a maximum compensation of ten (\$10.00) dollars per week, and a minimum of five (\$5.00) dollars per week; provided, that if at the time of injury, the employé receives wages less than five (\$5.00) dollars per week, then he shall receive the full amount of wages per week.

This compensation shall be paid during the period of such disability, not however, beyond four hundred (400) weeks.

(j) For disability partial in character and permanent in quality the compensation shall be based upon the extent of such disability.

For all cases included in the following schedule compensation shall be paid as follows, to-wit:

(1) For the loss of a thumb fifty per cent (50%) of daily wages during forty weeks.

(2) For the loss of a first finger, commonly called the index finger, fifty per cent (50%) of daily wages during thirty (30) weeks.

(3) For the loss of a second finger, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

(4) For the loss of a third finger, fifty per cent (50%) of daily wages during twenty (20) weeks.

(5) For the loss of a fourth finger, commonly called the little finger, fifty per cent (50%) of daily wages for fifteen (15) weeks.

(6) For the loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half of the amounts above specified.

(7) The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(8) For the loss of a great toe, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

(9) For the loss of one of the toes other than the great toe, fifty (50%) per cent of daily wages during fifteen (15) weeks.

(10) For the loss of the first phalange of any toe, shall be considered to be equal to the loss of one-half of such toe and the compensation shall be one-half of the amount above specified.

(11) The loss of more than one phalange shall be considered as the loss of the entire toe.

(12) For the loss of a hand fifty per cent (50%) of daily wages during one hundred fifty (150) weeks.

(13) For the loss of an arm fifty per cent (50%) of daily wages during two hundred (200) weeks.

(14) For the loss of a foot fifty per cent (50%) of daily wages during one hundred twenty-five (125) weeks.

(15) For the loss of a leg, fifty per cent (50%) of daily wages during one hundred seventy-five (175) weeks.

(16) For the loss of an eye, fifty per cent (50%) of daily wages during one hundred (100) weeks.

(17) For the loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability to be compensated according to provisions of clause "I" section ten, part one hereof.

(18) In all other cases in this, clause "J", the compensation

shall bear such relation to the amount stated in the above schedule as the disability bears to those produced by the injuries named in the schedule. Should the employé and employer be unable to agree upon the amount of compensation to be paid in cases not specifically covered by the schedule, the amount of compensation shall be settled according to provisions of this act as in other cases of disagreement.

(19) The amounts specified in this, clause "J" and sub-divisions thereof shall be subject to the same limitations as to maximum and minimum weekly payments as are stated in clause "H" section ten hereof.

SEC. 11. Where an employé is entitled to compensation under this act for an injury received and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

SEC. 12. After an injury the employé, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state without cost to the employé; but if the employé requests he shall, at his own cost, be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension.

SEC. 13. The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employés in his employment subject to the provisions of this act, and it shall not be in any wise reduced by contribution from employés.

SEC. 14. Where a minor dependent or one physically or mentally incapacitated from earning is entitled to compensation under this act, payment shall be made to a trustee appointed by the judge of the district court for each county in the respective judicial districts, and the money coming into the hands of the said trustee shall be expended for the use and benefit of the person entitled



thereto under the direction and orders of the judge during term time or in vacation. The trustee shall make annual reports to the court of all money or property received and expended for each person, and for services rendered as trustee shall be paid such compensation by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county in which the appointment is made. If the judge making the appointment deems it advisable, a trustee may be appointed to serve for more than one county in the district and the expenses shall be paid ratably by each county according to the amount of work performed in each county. The trustee shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best.

SEC. 15. In any case where the period of compensation can be determined definitely either party may, upon due notice to the other, apply to any judge of the district court for the county in which the accident occurred for an order commuting future payments to a lump sum. And such judge may make such an order when it shall be shown to his satisfaction that the payment of a lump sum in lieu of future monthly or weekly payments, as the case may be, will be for the best interest of the person or persons receiving or dependent upon said compensation, or that the continuance of periodical payments will as compared with lump sum payments entail undue expense or undue hardship upon the employer liable therefor. Where the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at 5 per cent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, for which said compensation was being paid, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement, award, finding or judgment shall be discharged of record.

SEC. 16. The basis for computing compensation provided for in this act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages

or earnings in the employment of the same employer during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employé was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) The annual earnings, if not otherwise determinable, shall be regarded as three hundred (300) times the average daily earnings in such computation.

(d) If the injured person has not been engaged in the employment for a full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same or in neighboring employments of the same kind have earned during such period. And if this basis of computation is impossible, or should appear to be unreasonable, three hundred (300) times the amount which the injured person earned on an average of those days when he was working during the year next preceding the accident, shall be used as a basis for the computation.

(e) In case of injured employés who earn either no wages or less than three hundred (300) times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality the yearly wage shall be reckoned as three hundred (300) times the average daily local wages of the average wage earner in that particular kind or class of work; or if information of that class is not obtainable, then of the class or kindred or similarity in the same general employment in the same neighborhood.

(f) As to employés in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number shall be used instead of three hundred (300) as a basis for computing the annual earnings, provided, the minimum number of days which shall be used for the basis of the year's work shall not be less than two hundred (200).

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employé to cover any special expense entailed on him by the nature of his employment.

## Iowa

(h) In computing the compensation to be paid to any employé who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

SEC. 17. In this act unless the context otherwise requires:

(a) "Employer" includes and applies to any person, firm, association or corporation, and includes state, counties, municipal corporations, cities under special charter and under commission form of government and shall include school districts and the legal representatives of a deceased employer. Whenever necessary to give effect to section seven of this act, it includes a principal or intermediate contractor.

(b) "Workman" is used synonymous with "employé" and means any person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship for an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business or those engaged in clerical work only, but clerical work shall not include one who may be subjected to the hazards of the business or one holding an official position or standing in a representative capacity of the employer, or an official elected or appointed by the state, county, school district, municipal corporation, cities under special charter and commission form of government. Provided, that one who sustains the relation of contractor with any person, firm, association, corporation or the state, county, school district, municipal corporation, cities under special charter or commission form of government, shall not be considered an employé thereof.

The term "workman" shall include the singular and plural of both sexes. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, legal representatives or where the workman is a minor or incompetent to his guardian or next friend.

(c) The following shall be conclusively presumed to be wholly dependent upon a deceased employé:

(1) The surviving spouse, unless it be shown that the survivor wilfully deserted deceased without fault upon the part of the de-

## Iowa

ceased, and if it be shown that the survivor deserted deceased without fault upon the part of deceased, the survivor shall not be regarded as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury.

(2) A child or children under sixteen years of age (and over said age if physically or mentally incapacitated from earning) whether actually dependent for support or not upon the parent at the time of his or her death.

(3) A parent of a minor entitled to the earnings of the employé at the time when the injury occurred, subject to provisions of subdivision "F" section ten hereof.

(4) If the deceased employé leaves dependent surviving spouse, the full compensation shall be paid to such spouse; but if the dependent surviving spouse dies before payment is made in full, the balance remaining shall be paid to the person or persons wholly dependent, if any, share and share alike. If there be no person or persons wholly dependent, then payment shall be made to partial dependents.

(5) In all other cases questions of dependency in whole or in part shall be determined in accordance with the fact as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be equally divided among them, and persons partially dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. Provided, however, that when a lump sum is paid as contemplated by this act, the court or commissioner, in making distribution thereof, shall take into consideration the contingent rights of partial beneficiaries or the rights of those who may become such after a wholly dependent child or children become sixteen years of age.

(6) Step-parents shall be regarded in this act as parents.

(7) Adopted child or children or step-child or children shall be regarded in this act the same as if issue of the body.

(d) "Injury" or "personal injury" includes death resulting from injury.

(e) The words "personal injury arising out of and in the course

## Iowa

of such employment" shall include injuries to employ  s whose services are being performed on, in or about the premises which are occupied, used or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

(f) The words "injury and personal injury" shall not include injury caused by the wilful act of a third person directed against an employ   for reasons personal to such employ   or because of his employment.

(g) They shall not include a disease except as it shall result from the injury.

(h) "Industrial employment" includes only employment in occupation, callings, businesses or pursuits which are carried on by the employer for the sake of pecuniary gain.

(i) The word "court" whenever used in this act unless the context shows otherwise, shall be taken to mean the district court.

SEC. 18. (a) Any contract of employment, relief benefit or insurance or other device whereby the employ   is required to pay any premium or premiums for insurance against the compensation provided for in this act shall be null and void; and any employer withholding from the wages of any employ   any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars for each offense in the discretion of the court.

No employ   or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employ   or beneficiary hereunder to whom the act applies.

SEC. 19. Any contract or agreement made by any employer or his agent or attorney with any employ   or any other beneficiary of any claim under the provisions of this act within twelve (12) days after the injury shall be presumed to be fraudulent.

SEC. 20. The Iowa industrial commissioner co-operating with the employers affected by this act, or any committee or committees appointed by such employers or the Iowa industrial commissioner, shall fix standards of safety for safety appliances or places

## Iowa

of employment, except mines under the jurisdiction of the mine inspectors.

SEC. 21. No claim of an attorney-at-law for services in securing a recovery under this act shall be an enforceable lien thereon unless the amount of the same be approved in writing by a judge of a court of record or the Iowa industrial commissioner, which approval may be made in term time or vacation.

SEC. 22. The provisions of this act shall apply to employers and employés as defined in this act engaged in intra-state commerce and also those engaged in inter-state or foreign commerce for whom a rule or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intra-state work or foreign commerce shall be clearly separable and distinguishable from inter-state or foreign commerce; provided that any such employer and workman of such employer working only in this state may, subject to the approval of the Iowa industrial commissioner, and so far as not forbidden by any act of congress or permitted, voluntarily by written agreement, accept and become bound by the provisions of this act in like manner and with the same force and effect in every respect as by this act provided for other employers and employés.

## PART II

SEC. 23. There is hereby created the office of Iowa industrial commissioner, to be appointed by the governor, by and with the consent of the senate. The term of office of the commissioner shall be six years. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof.

SEC. 24. The salary and actual necessary expenses of the commissioner shall be paid by the state, and he shall be provided with adequate and necessary office rooms, furniture, equipment, supplies and other necessities in the transaction of the business. The salary of the commissioner shall be three thousand dollars (\$3,000.00) per annum. The commissioner, by and with the consent of the executive council may fix the salary and appoint a secretary and other assistants and clerical help as may be required and needed, provided, that the salary of the secretary shall

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Iowa

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not exceed fifteen hundred dollars (\$1,500.00) per annum. The salary and actual personal expense account of the commissioner shall be itemized and sworn to, and filed as other current bills as provided by statute, and warrant therefor shall be issued by the auditor upon the treasurer of the state for the payment thereof at the end of each calendar month; provided, however, that the expense account may be audited, allowed and paid at the end of each week. The commissioner shall provide himself with a seal, which shall be used to authenticate his orders, decisions and other proceedings deemed necessary, upon which shall be inscribed the words "Iowa Industrial Commissioner's Seal" and the date of organization. All other accounts made by, through or under the commissioner for salaries, expenditures, unless otherwise by this act provided, shall be itemized and sworn to by the parties entitled thereto, audited by the commissioner, attested by the secretary, filed as other bills are required by statute, and a warrant shall issue therefor by the auditor of state upon the treasurer, who shall pay the same out of the funds appropriated for the use of the commissioner as by this act provided. The salaries of all persons under the commissioner shall be audited, allowed and paid at the end of each month, and expense accounts may be audited, allowed and paid at the end of each week. The commissioner shall have the power to remove the secretary or any other person appointed to an office by him at any time the commissioner may see fit.

It shall be unlawful for any appointee by the commissioner to espouse the election or appointment of any candidate for or to any political office, or contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person performing the duties as an appointee under the commissioner violating the provisions of this act shall be sufficient cause for dismissal and removal from office.

Before entering upon his duties the commissioner shall qualify by taking the oath of his office, that he will support the constitution of the United States and the state of Iowa, and will faithfully and impartially, without fraud, fear or favor, discharge the duties of his office incumbent upon him, as provided by the law of the state of Iowa, to the best of his ability and understanding.

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Iowa

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There is hereby appropriated out of any money not otherwise appropriated for the use of the commissioner, as contemplated within the terms of this act or acts amendatory thereof, or other statutes relating to the commissioner, his duties and responsibilities empowered by law, the sum of twenty thousand dollars (\$20,000.00) annually, and in addition thereto the executive council shall provide and furnish the commissioner with such printing as may be necessary in the transaction of the business within the contemplation of law.

SEC. 25. The commissioner may make rules and regulations not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The commissioner shall have the power to subpoena witnesses, administer oaths and to examine such books and records of the parties to a proceeding or investigation as relate to questions in dispute or under investigation. The fees for attending as a witness before the industrial commissioner shall be \$1.50 per diem; for attending before an arbitration committee \$1.00 per diem; in both cases five cents per mile for traveling to and from the place of hearing. The district court is hereby empowered to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records. The commissioner shall make biennial reports to the governor who shall transmit the same to the general assembly, in which among other things, the commissioner shall recommend such changes in the law covered by this act as it may deem necessary.

SEC. 26. If the employer and the employé reach an agreement in regard to the compensation under this act, a memorandum thereof shall be filed with the Iowa industrial commissioner by the employer or employé, and unless the commissioner shall, within twenty days, notify the employer and employé of his disapproval of the agreement by registered letter sent to their addresses as given on the memorandum filed; the agreement shall stand as approved and be enforceable [enforcible] for all purposes under the provisions of this act. Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this act.

SEC. 27. If the employer and the injured employé or repre-



## Iowa

sentatives or dependents fail to reach an agreement in regard to compensation under this act, either party may notify the industrial commissioner, who shall thereupon call for the formation of a committee of arbitration. The arbitration committee shall consist of three persons, one of whom shall be the industrial commissioner who shall act as chairman. The other two shall be named, respectively, by the two parties. If a vacancy occurs it shall be filled by the party whose representative is unable to act.

SEC. 28. The arbitrators appointed by the parties shall be sworn by the chairman to take the following oath:

I ..... do solemnly swear (or affirm) that I will faithfully perform my duties as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party.

(Signed) .....

SEC. 29. It shall be the duty of the industrial commissioner, upon notification, that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The commissioner shall act as chairman, and, if either party does not appoint its member on this committee within seven days after notification as above provided, or after a vacancy has occurred, the commissioner shall fill the vacancy and notify the parties to that effect.

SEC. 30. The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be in the city, town or place where the injury occurred and the decision of the committee, together with the statement of evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial commissioner. Unless a claim for a review is filed by either party within five days, the decision shall be enforceable under the provisions of this act.

SEC. 31. The industrial commissioner may appoint a duly qualified impartial physician to examine the injured employé and make report. The fee for this service shall be five (\$5.00) dollars, to be paid by the industrial commissioner together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any

## Iowa

injured employé shall not be prohibited from testifying before the Iowa industrial commissioner or any other person, commission or court, as to the results of his examination or the condition of the injured employé.

SEC. 32. The arbitrators named by or for the parties to the dispute shall each receive five (\$5.00) dollars as a fee for his services, but the industrial commissioner may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the employer who may deduct an amount equal to one-half of the sum from any compensation found due the employé. And all other costs incurred in the hearing before the board of arbitration shall be taxed to the losing party, or an equitable apportionment made thereof by the committee according to the facts.

SEC. 33. If a claim for review is filed, the industrial commissioner shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

SEC. 34. Any party in interest may present certified copy of an order or decision of the commissioner or a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact or where the decree is based upon an order or decision of the commissioner which has not been presented to the court within ten days after the notice of the filing thereof by the commissioner. Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing or increasing a weekly payment under the provisions of this act, the court shall revoke or modify the decree to conform to such decision.

## Iowa

SEC. 35. (a) Any payment to be made under this act may be reviewed by the industrial commissioner at the request of the employer or of the employé, and on such review it may be ended, diminished or increased subject to the maximum or minimum amounts provided for in this act if the commissioner finds the conditions of the employé warrants such action.

(b) Any notice to be given by the commissioner or court provided for in this act shall be in writing but service thereof shall be sufficient if registered and deposited in the mail, addressed to the last known address of the parties.

SEC. 36. Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial commissioner unless otherwise provided in this act.

SEC. 37. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employés in the course of their employment. Within forty-eight hours not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury, a report shall be made in writing by the employer to the industrial commissioner on blanks to be procured from the commissioner for that purpose.

Upon the termination of the disability of the injured employé, or if such disability extends beyond a period of sixty days, at the expiration of such period, the employer shall make a supplemental report on blanks to be procured from the commissioner for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex, and occupation of the injured employé, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the commissioner. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars (\$50.00) for each offense.

All books, records and pay-rolls of the employers, coming under this act showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commissioner, or any of his representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure;

the number of men employed and such other information as may be necessary for the uses and purposes of the commissioner in its administration of the law. But information obtained within the contemplation of this act shall be used for no other purpose than the information of the commissioner or insurance association with reference to the duties imposed upon such commissioner. A refusal on the part of the employer to submit his books, records or pay-rolls for the inspection of the commissioner, or his authorized representatives presenting written authority from the commissioner, shall subject the employer to a penalty of one hundred dollars (\$100.00) for each such offense to be collected by civil action in the name of the state, and paid in to the state treasurer.

SEC. 38. It shall be unlawful for the commissioner, during his term of office, to serve upon any committee of any political party or espouse the election or appointment of any person for any political office or contribute to any campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointed to any political office. A violation of this section shall be deemed a misdemeanor and upon conviction shall be fined one hundred (\$100.00) dollars.

SEC. 39. It shall be unlawful for any person who is a candidate for the appointment as commissioner to make any promise to another, expressed or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as commissioner, vote to appoint such person or one whom he may recommend to an office within the power of the commissioner to appoint. A violation thereof shall be deemed a misdemeanor and upon conviction thereof shall be fined one hundred (\$100.00) dollars.

SEC. 40. All recommendations to the governor of any person asking the appointment of another as commissioner shall be reduced to writing signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection, and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same and filed by the commissioner and open for public inspection at all reasonable times and hours. If any person recommending the appointment

of another within the contemplation of this act refuse to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a brief memoranda thereof stating the name of the person recommended and the name of the person who made the same, which shall be filed as by this act in other cases provided. It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this act during his term of office and any member offending this statute, it shall be sufficient grounds for his removal from office and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy.

SEC. 41. The governor shall remove from office the commissioner on the grounds of inefficiency, neglect of duty, or malfeasance in office, upon written charges having been filed with the executive council and sustained by proofs. But written notice of such charges, together with a copy thereof, shall be served upon the accused ten (10) days before the time fixed for hearing. The executive council shall have jurisdiction to hear the case, and shall make such finding in accordance with justice and the law. The finding shall be reduced to writing, and report and finding filed with the governor.

### PART III

SEC. 42. Every employer, subject to the provisions of this act, shall insure his liability thereunder in some corporation, association or organization approved by the state department of insurance. Every such employer shall within thirty (30) days after this act goes into effect exhibit on demand of the state insurance department evidence of his compliance with this section. And if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under part one (1) of this act.

SEC. 43. For the purpose of complying with the foregoing section, groups of employers by themselves or in an association with any or all of their workmen, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the state insurance department and membership in such mutual insurance organization as approved,

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Iowa

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together with evidence of the payment of premiums due, shall be evidence of compliance with the preceding section.

SEC. 44. Subject to the approval of the Iowa industrial commissioner any employer or group of employers may enter into or continue an agreement with his or their workmen to provide a scheme of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act; but such scheme shall in no instance provide less than the benefits here secured, nor vary the period of compensation provided for disability or for death, or the provisions of this act with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; provided, further, that the approval of the Iowa industrial commissioner shall be granted, if the scheme provides for contribution by workmen, only when it confers benefits in addition to those required by this act commensurate with such contributions.

SEC. 45. Whenever such scheme or plan is approved by the Iowa industrial commissioner, he shall issue a certificate to that effect, wherupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workmen to substitute such scheme or plan for the provisions of this act during a period of time fixed by said department.

SEC. 46. Such scheme or plan may be terminated by the Iowa industrial commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; but from any such order of said Iowa industrial commissioner the parties affected, whether employer or workman, may, upon the giving of proper bond to protect the interests involved appeal for equitable relief to the district court of this state.

SEC. 47. No insurer of any obligation under this act shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this act more than fifteen (15) per cent of the premium charged.

SEC. 48. Every policy issued by any insurance corporation, association or organization to assure the payment of compensation

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Iowa

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under this act shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer and the insurer shall be bound by every agreement, adjudgment, award or judgment rendered against the insured.

SEC. 49. No policy of insurance issued under this act shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid. Every policy shall provide that the workmen shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability or disability of the insured to receive the amount due and pay it over to the insured workman, or his dependents, said insurer shall pay the same directly to such workman, his agent, or to a trustee for him or his dependents, to the extent of discharging any obligation of the insured to said workman or his dependents.

SEC. 50. Where an employer coming under this act furnishes proofs to the insurance department satisfactory to the insurance department and Iowa industrial commissioner, of such employer's solvency and financial ability to pay the compensation and benefits as by this act provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such insurance department security satisfactory to such insurance department and the Iowa industrial commissioner as will secure the payment of such compensation, such employer shall be relieved of the provision of section forty-two (42) of this act. Provided that such employer shall from time to time, as may be required by such insurance department and Iowa industrial commissioner, furnish such additional proof of solvency and financial ability to pay as by this section of this act provided.

The insurance department and Iowa industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order or approval theretofore made, as by this act provided and within the contemplation of this section.

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Iowa

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SEC. 51. Part one of this act shall take effect from and after July first, 1914, and parts two and three July fourth, 1913.

And any employer or employé who serves the notice to reject the terms of the act as by the act provided not less than thirty days before part one thereof takes effect, such notice for the purpose rejecting the terms of the act shall have the same force and effect as though part one had taken effect July fourth, 1913.

Approved April 18 A. D. 1913.



## KANSAS

(L. 1911, c. 218, as amended by L. 1913, c. 216, in effect March 12, 1913.)

An act to provide compensation for workmen injured in certain hazardous industries.

*Be it enacted by the Legislature of the State of Kansas:*

### THE OBLIGATION

SECTION 1. If in any employment to which this act applies, personal injury by accident arising out of and in the course of employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation to the workman in accordance with this act. Save as herein provided, no such employer shall be liable for any injury for which compensation is recoverable under this act; provided, that (a) the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he is employed; (b) if it is proved that the injury to the workman results from his deliberate intention to cause such injury, or from his willful failure to use a guard or protection against accident required pursuant to any statute and provided for him, or a reasonable and proper guard and protection voluntarily furnished him by said employer, or solely from his deliberate breach of statutory regulations affecting safety of life or limb, or from his intoxication, any compensation in respect to that injury shall be disallowed.

(Section 2, L. 1911, c. 218, was repealed by L. 1913, c. 216, in effect March 12, 1913.)

### RESERVATION OF PENALTIES

SEC. 3. Nothing in this act shall affect the liability of the employer or employé to a fine or penalty under any other statute.

## SUBCONTRACTING

SEC. 4. (a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of his trade or business or which he has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. (b) Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of this section, and shall have a cause of action therefor. (c) Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from the contractor instead of the principal. (d) This section shall not apply to any case where the accident occurred elsewhere than on or in, or about the premises on which the principal has undertaken to execute work or which are otherwise under his control or management, or on, in, or about the execution of such work under his control or management. (e) A principal contractor, when sued by a workman of a subcontractor, shall have the right to implead the subcontractor. (f) The principal contractor who pays compensation voluntarily to a workman of a subcontractor shall have the right to recover over against the subcontractor.

## REMEDIES BOTH AGAINST EMPLOYER AND STRANGER

SEC. 5. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability against some person other than the employer to pay damages in respect thereof. (a) The workman may take proceedings

## Kansas

against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and (b) If the workman has recovered compensation under this act, the person by whom the compensation was paid, or any person who has been called on to indemnify him under the section of this act relating to subcontracting, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the workman to recover damages therefor.

## APPLICATION OF THE ACT

SEC. 6. This act shall apply only to employment in the course of the employer's trade or business on, in or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant, county and municipal work, and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen. This act shall not apply in any case where the accident occurred before this act takes effect, and all rights which have accrued, by reason of any such accident, at the time of the publication of this act, shall be saved the remedies now existing therefor, and the court shall have the same power as to them as if this act had not been enacted. Agricultural pursuits and employments incident thereto are hereby declared to be non-hazardous and exempt from the provisions of this act.

SEC. 7. This act shall not be construed to apply to business or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged.

SEC. 8. It is hereby determined that the necessity for this law and the reason for its enactment, exist only with regard to em-

## Kansas

ployers who employ a considerable number of persons. This act, therefore, shall only apply to employers by whom five or more workmen have been (employed) continuously for more than one month at the time of the accident; provided, however, that employers having less than five workmen may elect to come within the provisions of this act in which case his employés shall be included herein, as hereinafter provided; and, provided further that this act shall apply to mines without regard to number of workmen employed. (*As am'd by L. 1913, c. 216, in effect March 12, 1913.*)

## DEFINITIONS

SEC. 9. In this act, unless the context otherwise requires, (a) "Railway" includes street railways and interurbans; and "employment on railways" includes work in depots, power houses, roundhouses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars and trains, and to employés of express companies while running on railroad trains. (b) "Factory" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brick yard, meat-packing house, foundry, smelter, oil refinery, lime burning plant, steam heating plant, electric lighting plant, electric power plant and water power plant, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or repair shop, salt plant, and chemical manufacturing plant. (c) "Mine" means any opening in the earth for the purpose of extracting any minerals, and all underground workings, slopes, shafts, galleries, and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven; and includes all the appurtenant structures at or about the openings of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment. (d) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain or of the employer's trade or business. (e) "Electrical work" means any kind of work in or directly connected with the construction, installation, operation, alteration,

removal, or repair of wires, cables, switchboards or apparatus, used for the transmission of electrical current. (f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances. (g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined) bridge, jetty, dike, dam, reservoir, underground conduit, sewer, oil or gas well, oil tank, gas tank, water tower, or water works (including standpipes or mains) any caisson work or work in artificially compressed air, any work in dredging, pile driving, moving buildings, moving safes, or in laying, repairing or removing, underground pipes and connections, the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery, (including belting and other connections) and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives is in use (excluding mining and quarrying). (h) "Employer" includes any person or body of persons corporate or incorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership. (i) "Workman" means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, but does not include a person who is employed otherwise than for the purpose of the employer's trade or business. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents, as hereinafter defined, or to his legal representative, or where he is a minor or incompetent, to his guardian. (j) "Dependents" means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. And "members of a family" for the purpose of this act means only widow or husband, as the case may be, and children; or if no widow, husband or children, then parents and grandparents, or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section parents include step-parents, children include step-children, and grandchildren include step-grandchildren, and brothers and sisters include step-brothers and step-sisters, and children and parents include that relation by legal adoption. (k) The words "arising

## Kansas

out of and in the course of employment" as used in this act shall not be construed to include injuries to the employé occurring while he is on his way to assume the duties of his employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. (*As am'd by L. 1913, c. 216, in effect March 12, 1913.*)

## INCOMPETENCY OF WORKMAN

SEC. 10. In case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents as herein defined is mentally incompetent or a minor, at the time when any right, privilege or election accrues to him under this act, his guardian may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no guardian.

## AMOUNT OF COMPENSATION

SEC. 11. The amount of compensation under this act shall be: (a) Where death results from injury: (1) If the workman leaves any dependents wholly dependent upon his earnings, an amount equal to three times his earnings for the preceding year but not exceeding thirty-six hundred dollars and not less than twelve hundred dollars, provided, such earnings shall be computed upon the basis of the scale which he received or would have been entitled to receive had he been at work, during the thirty days next preceding the accident; and, if the period of the workman's employment by said employer had been less than one year, then the amount of his earnings during the said year shall be deemed to be fifty-two times his average weekly earnings during the period of his actual employment under said employer; provided, that the amount of any payments made under this act and any lump sum paid hereunder for such injury from which death may thereafter result shall be deducted from such sum; and provided, however, that if the workman does not leave any dependents, citizens of and residing at the time of the accident in the United States or the Dominion of Canada, the amount of compensation shall not exceed in any case seven hundred and fifty dollars. (2) If the workman does not leave any such dependents, but leaves any

## Kansas

dependents in part dependent upon his earnings, such proportion of the amount payable under the foregoing provisions of this section, as may be agreed upon or determined to be proportionate to the injury to the said dependents; and (3) If he leaves no dependents, the reasonable expense of his medical attendance and burial, not exceeding one hundred dollars. (4) Marriage of any dependent shall terminate all compensation of such dependent, but shall not affect compensation allowed other dependents; when any minor dependent, not physically or mentally incapable of wage earning shall become eighteen years of age, such compensation shall cease. (b) Where total incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, equal to fifty per cent of his average weekly earnings computed as provided in section 12 but in no case less than six dollars per week or more than fifteen dollars per week. (c) When partial incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, shall not be less than twenty-five per cent, nor exceed fifty per cent, based upon the average weekly earnings computed as provided in section 12, but in no case less than three dollars per week or more than twelve dollars per week; provided, however, that if the workman is under twenty-one years of age at the date of the accident and the average weekly earnings are less than \$10.00 his compensation shall not be less than seventy-five per cent of his average earnings. No such payment for total or partial disability shall extend over a period exceeding eight years. (*As am'd by L. 1913, c. 216, in effect March 12, 1913.*)

## RULE FOR COMPENSATION

SEC. 12. For the purposes of the provisions of this act relating to "earnings" and "average earnings" of a workman, the following rules shall be observed: (a) "Average earnings" shall be computed in such manner as is best calculated to give the average rate per week at which the workman was being remunerated for the 52 weeks prior to the accident. Provided, that where by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature or the terms of the employment, it is impracticable to compute the rate of remuneration, regard shall be had to the average weekly amount which,

## Kansas

during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person employed, by a person in the same grade employed in the same class of employment and in the same district. (b) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his "earnings" and his "average earnings" shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident. (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by his absence of work due to illness or any other unavoidable cause. (d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed upon him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings. (e) In fixing the amount of the payment, allowance shall be made for any payment or benefit which the workman may receive from the employer during his period of incapacity. (f) In the case of partial incapacity the payments shall be computed to equal, as closely as possible, fifty per cent of the difference between the amount of the "average earnings" of the workman before the accident, to be computed as herein provided, and the average amount which he is most probably able to earn in some suitable employment or business after the accident, subject, however, to the limitations hereinbefore provided.

## PAYMENTS TO THE INJURED WORKMAN

SEC. 13. The payments shall be made at the same time, place and in the same manner as the wages of the workman were payable at the time of the accident, but a judge of any district court having jurisdiction upon the application of either party may modify such regulation in a particular case as to him may seem just.

## COMPENSATION TO DEPENDENTS, ETC.

SEC. 14. Where death results from the injury and the dependents of the deceased workman as herein defined, have agreed to accept



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Kansas

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compensation, and the amount of such compensation and the apportionment thereof between them has been agreed to or otherwise determined, the employer may pay such compensation to them accordingly (or to an administrator if one be appointed) and thereupon be discharged from all further liability for the injury. Where only the apportionment of the agreed compensation between the dependents is not agreed to, the employer may pay the amount into any district court having jurisdiction or to the administrator of the deceased workman, with the same effect. Where the compensation has been so paid into court or to an administrator, the proper court, upon the petition of such administrator or any of such dependents, and upon such notice and proof as it may order shall determine the distribution thereof among such dependents. Where there are no dependents, medical and funeral expenses may be paid and distributed in like manner.

SEC. 15. The payments due under this act, as well as any judgment obtained thereunder, shall not be assignable or subject to levy, execution or attachment, except for medicine, medical attention and nursing and no claim of any attorney at law for services rendered in securing such indemnity or compensation or judgment shall be an enforceable lien thereon, unless the same has been approved in writing by the judge of the court where said case was tried; but if no trial was had, then by any judge of the district court of this state to whom such matter has been regularly submitted, on due notice to the party or parties in interest of such submission.

#### REPORTS AS TO ACCIDENTS AND COMPENSATION

SEC. 16. Employers affected by this act shall report annually to the state commissioner and factory inspector such reasonable particulars in regard thereto as he may require, including particulars as to all releases of liability under this act and any other law. The penalty for failure to report or for false report shall invalidate any such release of liability.

#### MEDICAL EXAMINATION

SEC. 17. (a) After an injury to the employé, if so requested by his employer, the employé must submit himself for examination

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Kansas

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at some reasonable time to a reputable physician selected by the employer, and from time to time thereafter during the pendency of his claim for compensation, or during the receipt by him for payment under this act, but he shall not be required to so submit himself, more than once in two weeks unless in accordance with such orders as may be made by the proper court or judge thereof. Either party may upon demand require a report of any examination made by the physician of the other party upon payment of a fee of one dollar therefor. (b) If the employé requests he shall be entitled to have a physician of his own selection present at the time to participate in such examinations. (c) Unless there has been a reasonable opportunity thereafter for such physician selected by the employé to participate in the examination in the presence of the physician selected by the employer, the physician selected by the employer shall not be permitted afterwards to give evidence of the condition of the employé in a dispute as to the injury. (d) Except as provided herein in this act there shall be no other disqualification or privilege preventing the testimony of a physician who actually makes an examination.

**MEDICAL EXAMINATION BY NEUTRAL PHYSICIAN**

**SEC. 18.** In case of a dispute as to the injury, the committee, or arbitrator as hereinafter provided, or the judge of the district court shall have the power to employ a neutral physician of good standing and ability, whose duty it shall be, at the expense of the parties to make an examination of the injured person, as the court may direct, on the petition of either or both the employer and employé or dependents.

**TESTIMONY BY COURT PHYSICIAN**

**SEC. 19.** If the employer or the employé has a physician make such an examination and no reasonable opportunity is given to the other party to have his physician make examination, then, in case of a dispute as to the injury, the physician of the party making such examination shall not give evidence before the court unless a neutral physician either has examined or then does examine the injured employé and give testimony regarding the injuries.

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Kansas

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## REFUSAL OF MEDICAL EXAMINATION

SEC. 20. If the employé shall refuse examination by physician selected by the employer, with the presence of a physician of his own selection, and shall refuse an examination by the physician appointed by the court, he shall have no right to compensation during the period from refusal until he, or some one in his behalf, notifies the employer\* or the court that he is willing to have such examination.

## CERTIFICATE OF PHYSICIAN

SEC. 21. A physician making an examination shall give to the employer and to the workman a certificate as to the condition of the workman, but such certificate shall not be competent evidence of that condition unless supported by his testimony if his testimony would have been admissible.

## NOTICE AND CLAIM

SEC. 22. Proceedings for the recovery of compensation under this act shall not be maintainable unless written notice of the accident, stating the time, place and particulars thereof, and the name and address of the person injured, has been given within ten days after the accident, and unless a claim for compensation has been made within three months after the accident or in case of death, within six months from the date thereof. Such notice shall be delivered by registered mail, or by delivery to the employer. The want of, or any defect in such notice, or in its service, shall not be a bar unless the employer proves that he has, in fact, been thereby prejudiced, or if such want or defect was occasioned by mistake, physical or mental incapacity or other reasonable cause, and the failure to make a claim within the period above specified shall be a bar; provided, however that in case of incapacity of an injured employé the limitation herein shall not run during such incapacity. (*As am'd by L. 1913, c. 216, in effect March 12, 1913.*)

## AGREEMENTS

SEC. 23. Compensation due under this act may be settled by agreement. Every such agreement, other than a release, shall be in the form hereinafter provided.

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Kansas

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## ARBITRATIONS

SEC. 24. If compensation be not so settled by agreement: (a) If any committee representative of the employer and the workman exists, organized for the purpose of settling disputes under this act, the matter shall, unless either party objects by notice in writing delivered or sent by registered mail to the other party before the committee meets to consider the matter, be settled in accordance with its rules by such committee or by an arbitrator selected by it. (b) If either party so objects, or there is no such committee, or the committee or the arbitrator to whom it refers the matter fails to settle it within sixty days from the date of the claim, the matter may be settled by a single arbitrator agreed on by the parties, or appointed by any judge of a court where an action might be maintained. The consent to arbitration shall be in writing and signed by the parties and may limit the fees of the arbitrator and the time within which the award must be made. And unless such consent and the order of appointment expressly refers other questions, only the question of the amount of compensation shall be deemed to be in issue.

## THE DUTIES OF ARBITRATOR

SEC. 25. The arbitrator shall not be bound by technical rules of procedure or evidence, but shall give the parties reasonable opportunity to be heard and act reasonably and without partiality. He shall make and file his award, with the consent to arbitration attached in the office of the clerk of the proper district court within the time limited in the consent, or if no time limit is fixed therein, within sixty days after his selection, and shall give notice of such filing to the parties by mail.

## ARBITRATOR'S FEES

SEC. 26. The arbitrator's fees shall be fixed by the consent to arbitration or be agreed to by the parties before the arbitration, and if not so fixed or agreed to, they shall not exceed \$10.00 per day, for not to exceed ten days, and disbursements for expense. The arbitrator shall tax or apportion the costs of such fees in his discretion and shall add the amount taxed or apportioned against the employer to the first payment made under the award, and he

## Kansas

shall note the amount of his fees on the award and shall have a lien therefor on the first payments due under the award.

## FORM OF AGREEMENTS AND AWARD

SEC. 27. Every agreement for compensation and every award shall be in writing, signed and acknowledged by the parties or by the arbitrator or secretary of the committee hereinbefore referred to, and shall specify the amount due and unpaid by the employer to the workman up to the date of the agreement or award, and if any, the amount of the payments thereafter to be paid by the employer to the workman and the length of time such payments shall continue.

## FILING AGREEMENTS, AWARDS, ETC.

SEC. 28. It shall be the duty of the employer to file or cause to be filed every release of liability hereunder, every agreement for an award of compensation, or modifying an agreement for or award of compensation, under this act, if not filed by the committee or arbitrator, to which he is a party, or a sworn copy thereof, in the office of the district court in the county in which the accident occurred within sixty days after it is made, otherwise it shall be void as against the workman. The said clerk shall accept, receipt for, and file any such release, agreement or award, without fee, and record and index it in the book kept for that purpose. Nothing herein shall be construed to prevent the workman from filing such agreement or award.

## AGREEMENTS AND AWARDS—WHEN CANCELED

SEC. 29. At any time within one year after an agreement or award has been so filed, a judge of a district court having jurisdiction may, upon the application of either party, cancel such agreement or award, upon such terms as may be just, if it be shown to his satisfaction that the workman has returned to work and is earning approximately the same or higher wages as or than he did before the accident, or that the agreement or award has been obtained by fraud or undue influence, or that the committee or arbitrator making the award acted without authority, or was guilty of serious misconduct, or that the award is grossly inadequate or grossly excessive, or if the employé absents himself so that a reasonable

## Kansas

examination of his condition cannot be made, or has departed beyond the boundaries of the United States or Canada.

## STAYING PROCEEDINGS UPON AGREEMENT OR AWARD

SEC. 30. At any time after the filing of an agreement or award and before judgment has been granted thereon, the employer may stay proceedings thereon by filing in the office of the clerk of the district court wherein such agreements or award is filed: (a) A proper certificate of a qualified insurance company that the amount of the compensation to the workman is insured by it: (b) A proper bond undertaking to secure the payment of the compensation. Such certificate or bond shall first be approved by a judge of the said district court.

## JUDGMENT UPON AGREEMENT OR AWARD

SEC. 31. At any time after an agreement or award has been filed, the workman may apply to the said district court for judgment against the employer for a lump sum equal to eighty per cent of the amount of payments due and unpaid and prospectively due under the agreement or award; and, unless the agreement or award be stayed, modified or canceled, or the liability thereunder be redeemed or otherwise discharged, the court shall examine the workman under oath, and if satisfied that the application is made because of doubt as to the security of his compensation, shall compute the sum and direct judgment accordingly, as if in an action; provided, that if the employer shall give a good and sufficient bond, approved by the court, no execution shall issue on such judgment so long as the employer continues to make payments in accordance with the original agreement or award undiminished by the discount.

## REVIEW OR MODIFICATION OF AGREEMENT OR AWARD

SEC. 32. An agreement or award may be modified at any time by a subsequent agreement; or, at any time after one year from the date of filing; it may be reviewed, upon the application of either party on the ground that the incapacity of the workman has subsequently increased or diminished. Such application shall be made to the said district court; and, unless the parties consent to arbitration, the court may appoint a medical practitioner to examine the

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Kansas

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workman and report to it; and upon his report and after hearing the evidence of the parties, the court may modify such agreement or award, as may be just, by ending, increasing or diminishing the compensation, subject to the limitations hereinbefore provided.

**REDEMPTION OF LIABILITY**

SEC. 33. Where any payment has been continued for not less than six months the liability therefor may be redeemed by the employer by the payment to the workman of a lump sum of an amount equal to eighty per cent of the payments which may become due according to the award, such amount to be determined by agreement, or, in default thereof, upon application, to a judge of a district court having jurisdiction. Upon paying such amount the employer shall be discharged from all further liability on account of the injury, and be entitled to a duly executed release, upon filing which or other due proof of payment, the liability upon any agreement or award shall be discharged of record.

**INSURANCE**

SEC. 34. Where the payment of compensation to the workman is insured, by a policy or policies, at the expense of the employer, the insurer shall be subrogated to the rights and duties under this act of the employer, so far as appropriate.

**COURTS**

SEC. 35. All references hereinbefore to a district court of the state of Kansas having jurisdiction of a civil action between the parties shall be construed as relating to the then existing code of civil procedure. Such court shall make all rules necessary and appropriate to carry out the provisions of this act.

**ACTIONS**

SEC. 36. A workman's right to compensation under this act, may, in default of agreement or arbitration, be determined and enforced by action in any court of competent jurisdiction. In every such action the right to trial by jury shall be deemed waived and the case tried by the court without a jury, unless either party, with his notice of trial, or when the case is placed upon the calendar—demand a jury trial. The judgment in the action, if in

## Kansas

favor of the plaintiff, shall be for a lump sum equal to the amount of the payments then due and prospectively due under this act, with interest on the payments overdue, or, in the discretion of the trial judge, for periodical payments as in an award. Where death results from injury, the action shall be brought by the dependent or dependents entitled to the compensation or by the legal representative of the deceased for the benefit of the dependents as herein defined; and in such action the judgment may provide for the proportion of the award to be distributed to or between the several dependents; otherwise such proportions shall be determined by the proper probate court. An action to set aside a release or other discharge of liability on the ground of fraud or mental incompetency may be joined with an action of compensation under this act. No action or proceeding provided for in this act shall be brought or maintained outside of the state of Kansas, and notice thereof may be given by publication against nonresidents of the state in the manner now provided by article 7 of Chapter 95, General Statutes of Kansas of 1909 so far as the same may be applicable, and by personal service of a true copy of the first publication within twenty-one days after the date of the said first publication unless excused by the court upon proper showing that such service cannot be made.

## WHEN THE CAUSE OF ACTION ACCRUES

SEC. 37. The cause of action shall be deemed in every case, including a case where death results from the injury to have accrued to the injured workman at the time of the accident; and the time limited in which to commence an action for compensation therefor shall run as against him, his legal representatives and dependents from that date.

## ATTORNEY'S LIENS

SEC. 38. Contingent fees of attorneys for services and proceedings under this act shall in every case be subject to approval by the court.

## CERTIFICATE REQUIRED

SEC. 39. If the superintendent of insurance by and with the advice and written approval of the attorney general certifies that



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Kansas

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any scheme of compensation, benefit or insurance for the workman of an employer in any employment to which this act applies, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act or their equivalents the employer may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act; and thereupon the employer shall be liable only in accordance with that scheme; but, save as aforesaid, this act shall not apply notwithstanding any contract to the contrary made after this act becomes a law.

## CONDITION TO CERTIFICATE

SEC. 40. No scheme shall be so certified which does not contain suitable provisions for the equitable distribution of any moneys or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already accrued, if and when such certificate is revoked or the scheme otherwise terminated.

## CERTIFICATE TO BE REVOCABLE

SEC. 41. If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or other valid and substantial reasons therefor exist, the superintendent of insurance by and with the attorney general shall revoke the certificate and the scheme shall thereby be terminated.

## INFORMATION TO BE REPORTED

SEC. 42. Where a certified scheme is in effect the employer shall answer all such inquiries and furnish all such accounts in regard thereto as may be required by the superintendent.

SEC. 43. The superintendent of insurance may make all rules and regulations necessary to carry out the purposes of the four preceding sections.

## Kansas

## PRESUMPTION OF ELECTION BY EMPLOYER

SEC. 44. All employers as defined by and entitled to come within the provisions of this act, shall be presumed to have done so unless such employer shall file with the secretary of state at Topeka, Kansas, a written statement that he elects not to accept thereunder, and thereafter any such employer desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state. Notice of such election shall be forthwith posted by such employer in conspicuous places in and about his place of business. (*As am'd by L. 1913, c. 216, in effect March 12, 1913.*)

## PRESUMPTION OF ELECTION BY EMPLOYÉ

SEC. 45. Every employé entitled to come within the provisions of this act, shall be presumed to have done so unless such employé shall file with the secretary of state, before injury, a written declaration that he elects not to accept thereunder and thereafter any such employé desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state. Any contract wherein an employer requires of an employé as a condition of employment that he shall elect not to come within the provisions of this act shall be void. (*As am'd by L. 1913, c. 216, in effect March 12, 1913.*)

SEC. 46. In any action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, where such employer is within the provisions hereof, it shall not be a defense to any employer (as herein in this act defined) who shall not have elected, as hereinbefore provided, to come within the provisions of this act: (a) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that such employé was guilty of contributory negligence but such contributory negligence of said employé shall be considered by the jury in assessing the amount of recovery.

## Kansas

SEC. 47. In an action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, and where such employer has elected to come and is within the provisions of this act as hereinbefore provided, it shall be a defense for such employer in all cases where said employé has elected not to come within the provisions of this act; (a) that the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that said employé was guilty of contributory negligence; provided, however, that none of these defenses shall be available where the injury was caused by the willful or gross negligence of such employer, or of any managing officer, or managing agent of said employer, or where under the law existing at the time of the death or injury such defenses are not available.

SEC. 48. Nothing in this act shall be construed to amend or repeal section 6999 of the General Statutes of Kansas of 1909 or House bill No. 240 of the Session of 1911, the same being "An act relating to the liability of common carriers by railroads to their employés in certain cases, and repealing all acts and parts of acts so far as the same are in conflict herewith."

SEC. 49. This act shall take effect and be in force from and after its publication in the statute book, and the first day of January, 1912. *Effective as amended March 12, 1913.*

## MARYLAND

(L. 1912, c. 837)

### AN ACT

TO ADD a new Article to the Code of Public General Laws of the State of Maryland, under title "An Act to facilitate the insurance of employees against the consequence of accidents resulting in personal injury or death, and to permit agreements between employers and employees with reference to such accidents."

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That it shall be lawful for any employer to make a contract in writing with any employee whereby the parties may agree that an employee shall become insured against accident occurring in the course of employment which results in personal injury or death, in accordance with the provisions of this act, and that in consideration of such insurance the employer shall be relieved from the consequence of acts or omissions by reason of which he would without such contract become liable toward such employee or toward the legal representative, widow, widower, or next of kin of such employee.

SEC. 2. Such insurance shall be effected in some casualty company organized under the laws of the State of Maryland or admitted to do business in this State, provided that any employer employing not less than fifteen hundred (1500) employees may establish an insurance fund from sums contributed by himself and his employees upon condition that he undertake and agree to make up any deficiency in insurance benefits that may arise out of the inadequacy of such fund. Such fund shall be inviolably appropriated as a trust fund for the purposes of such insurance and shall not be invested otherwise. Provision shall be made for the election by the insured employees of an advisory committee, which shall be kept informed regarding the state of the insurance fund, and shall have the right

## Maryland

to examine the books kept in connection therewith. Such books shall also be subject to the inspection of the Insurance Commissioner of this state in the same manner as books of insurance companies doing business in this state.

Upon the request of the employer or upon the request of the advisory committee, the Insurance Commissioner shall act as depository of the securities in which such funds may be invested.

If any employer desires to discontinue an insurance fund maintained by him, or if he discontinues his business without transferring the same to a successor or assign, taking over and agreeing to maintain such fund, he shall notify the Insurance Commissioner of his purpose, who shall thereupon supervise the disposition of the insurance fund. Such fund shall be distributed among those equitably entitled to it according to their contribution (not taking into consideration expenses of the management), and where those entitled to any part of the fund cannot be discovered or ascertained the moneys remaining unclaimed shall be paid into the Insurance Department, to be held and disposed of as may be provided by law.

The Insurance Commissioner shall be entitled to be paid out of such fund the reasonable expenses of his supervision, including a compensation not to exceed ten dollars per day for the time of any person or persons (other than a salaried employee of his office) employed by him for the purpose of such supervision necessarily spent in connection therewith.

## COMPENSATION REGARDLESS OF NEGLIGENCE

**SEC. 3.** Such insurance shall cover the risk of personal injury by accident arising out of and in course of the employment resulting in death, provided death occur within twelve months from the time of such injury, or resulting in disability whether the same be total or partial, permanent or temporary; "But no one shall be entitled to pay any benefit hereunder where the injury is the result of the employee's intoxication, or willful and deliberate act, or deliberate intention to produce such injury."

**SEC. 4.** The insurance in case of death shall be for the benefit of such persons being the widow, widower, father, mother, son or daughter, as are dependent wholly or in part for their support upon the earnings of such employee (all of which persons are hereinafter

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Maryland

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designated as dependents of such employee) or of such of them as may be named in the contract or policy to which it refers and the person for whose benefit such insurance is made should be bound by the agreement authorized by the first section of this act.

SEC. 5. In order to satisfy the requirements of this act, the benefits payable under such insurance shall be at least as follows:

(I) In case of death:

(a) If the employee insures for the benefit of any dependent wholly dependent upon his wages at the time of his death, a sum equal to his wages in the employment of said employer during a period of three years next preceding the accident, but not less in any case than the sum of one thousand dollars; provided, that the amount of any weekly payments made under such insurance or any lump sum paid in redemption thereof, may be deducted from such sum; and if the period of the employee's employment by said employer has been less than said three years, then the amount of his earnings during said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment by said employer.

(b) If the employee insures for the benefit only of persons partly dependent upon his wages at the time of his death, then a sum equal to the payments provided for the benefit of persons wholly dependent, less six times the average annual earnings; or if employed for less than a year, then less three hundred times the average weekly earnings of said dependent person or persons partly dependent on his wages.

(c) If the employee leaves no dependents, then the reasonable expenses of his medical attendance shall be paid, and in addition burial expenses not less than seventy-five dollars nor more than one hundred dollars.

And the contract or policy therein referred to may provide for the payment, instead of a lump sum, of a weekly sum, which, in the case of persons wholly dependent, shall not be less than the weekly payment in case of total disability hereinafter provided for, and which, in the case of persons partly dependent, shall not be less than the weekly payment in case of total disability, less the amounts earned by the persons partly dependent, and which sum may be divided between the dependents in such a manner as such contract or policy may provide or as may otherwise be agreed upon; or such

## Maryland

contract or policy may provide for a combination of lump sums, weekly payments, or for the substitution of one for the other.

(II) In case of injury not resulting in death, where total disability results from the injury, a weekly payment during the period of such disability shall be paid to the insured, which shall not be less than fifty per cent. of his average weekly wages during the previous twelve months, if he has been so long employed by the contracting employer; if not, then a weekly benefit during such shorter period as he has been in the employment of said employer.

(III) In case of injury not resulting in death, where partial disability results, such weekly payments shall be made during the period of such partial disability as is equal to the difference between the weekly benefit payments during the period of total disability and the average amount which the injured person is able to earn after the accident.

Loss by actual separation at or above the wrist or ankles of both hands or both feet, or of one hand and one foot, or the irrevocable loss of both eyes, shall be deemed to be equal to total disability.

The loss by actual separation at or above the wrist or ankle of one hand or one foot shall be equal to one-half of total disability, and the loss of one eye shall be equal to one-fifth of total disability. Total disability shall be deemed to mean inability to carry on any gainful occupation.

The contract or policy herein referred to may provide that no benefits shall be paid in case of any injury which does not incapacitate the employee for a period of at least one week from earning full wages at the work at which he was employed at the time of the accident.

SEC. 6. Any contract in order to satisfy the requirements of this act shall provide that the employer shall contribute not less than fifty per cent. of the insurance premiums and the employees shall contribute the remainder of the premiums.

In case the employer provides any insurance fund out of contributions made by himself and his own employees as above provided, such employer shall pay the whole of the expenses of the management of such fund, and all contributions shall be paid into such fund without any deduction by reason of such expense.

SEC. 7. The contract may provide that upon penalty of forfeiture of the benefits of the insurance, the employee shall give

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Maryland

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reasonable and timely notice to his employer, to be fixed by the terms of this contract, of any accident which may entitle him to the benefit of such insurance; and that he shall submit himself to medical examination as required by the employer at the employer's expense.

SEC. 8. The contract may provide that the premium payable by the employees shall be deducted from their wages.

An employer who shall willfully and feloniously appropriate the amounts so deducted from the wages to any use other than the payment of insurance premiums as stipulated in the contract, shall be guilty of embezzlement and shall be punished accordingly.

SEC. 9. The contract between the employer and employee may provide that the insurance premiums shall be paid into the hands of a treasurer to be elected or appointed by the employees or by the employer and the employees in such manner and under such voting arrangements as the contract may specify.

The payment of the premiums to the treasurer shall relieve the employer, and the penalty above prescribed for misappropriation of the funds required to be applied to insurance shall apply to such treasurer.

SEC. 10. In case of non-payment of the premiums within one month after the same are payable, the insurance company shall within two months after the expiration of such month send notice of such default by mail to the insured and to the Insurance Commissioner of the State.

The insurance policy or contract between the employer and employee may specify a shorter period than the one herein provided for.

Until the required notice shall have been sent, the policy shall not be forfeited for non-payment of the premium.

SEC. 11. The employer may also advance the premiums of insurance for such number of employees and at such rates as may be agreed upon between him and the insurance company, and may thereupon be supplied by the insurance company with blank policies to be filled in by him with name of any beneficiary under the provisions of this act, and to be executed by him as agent of such company, and he may thereupon reimburse himself for the amounts payable by the employee by deducting the same from the wages of such employee.



## Maryland

SEC. 12. Such contract may provide that upon termination of his employment from any cause whatever the employee and his dependent shall cease to be entitled to the benefits of such insurance except as regards accidents occurring before the termination of his employment.

## ARBITRATION

SEC. 13. Such contract may provide that any controversy regarding the extent of disability or the extent of dependency, or any controversy between dependents as to the amounts payable to them respectively, shall be settled by arbitration, the arbitrators to be named by mutual consent of the parties; and should the parties fail to agree upon an arbitrator, then the arbitrator to be named by the judge of a circuit court of the county or City of Baltimore in which the accident happened, and the award of such arbitrator shall be binding upon both employer and employee or his dependents, as the case may be.

SEC. 14. Any insurance paid in accordance with the provisions of this act shall not be liable to attachment by trustee, garnishee, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process or by operation of law, to pay any debt or liability of the insured or any beneficiary, nor shall any claim to insurance money be assignable by payee before the same is paid.

SEC. 15. A contract of insurance, in pursuance of the terms of this act, shall not relieve the employer from liability for any accident directly due to his failure to supply any safeguard required to be provided for the protection of employees, by or pursuant to any statute or ordinance, or any regulation under any statute or ordinance, unless it shall have been impossible to comply with such requirement by the time the accident happened, or unless the enforcement thereof has been suspended on order of the court of competent jurisdiction.

SEC. 16. Every employer shall file with the Insurance Commissioner a copy of the form of contract and policy which he shall use under the provisions of this act, and in the event of such form being departed from in any particular case shall file also a copy of such particular contract.

If he shall fail to do so, he shall be liable to a penalty of fifty

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Maryland

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dollars in each case, to be recovered in an action of debt in the name of the state.

SEC. 17. A quarterly report of all settlements and payments of insurance benefits shall be filed by the employer with the Insurance Commissioner. If such employer shall fail to make such report in thirty days after demand by the Insurance Commissioner, he shall be liable to a penalty of fifty dollars, to be recovered in an action of debt in the name of the state.

SEC. 18. The Insurance Commissioner shall prepare blanks of contracts and policies complying with the provisions of this act, and shall distribute the same, upon application, free of charge.

SEC. 19. Nothing in this act contained shall be construed as authorizing any employer, or any officer or agent of such employer to require any employee or any person seeking employment, as a condition of such employment or of the continuance of such employment, to enter into a contract, or to continue in such contract, such as is authorized to be made by section 1 of this act.

SEC. 20. All provisions in the statutes inconsistent with this act are hereby repealed.

SEC. 21. This act shall take effect and be in force from the date of its passage.

Approved by Governor—April 15, 1912.

# MASSACHUSETTS

(As am'd July 1, 1913)

## PART I

### MODIFICATION OF REMEDIES

SECTION 1. In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employee was negligent;
2. That the injury was caused by the negligence of a fellow employee;
3. That the employee had assumed the risk of the injury.

SEC. 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers.

SEC. 3. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by employees of a subscriber.

SEC. 4. The provisions of sections one hundred and twenty-seven to one hundred and thirty-five, inclusive, and of one hundred and forty-one to one hundred and forty-three, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, and of any acts in amendment thereof, shall not apply to employees of a subscriber while this act is in effect.

SEC. 5. An employee of a subscriber shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such right, or if the contract of hire was made before the employer became a subscriber, if the employee shall not have given the said notice within thirty days of notice of such subscription. An employee who has given notice to his employer that he claimed his right of action at

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Massachusetts

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common law may waive such claim by a notice in writing which shall take effect five days after it is delivered to the employer or his agent. [See chapter 666, Acts of 1912, *post*, p. 1261.]

## PART II

## PAYMENTS

SECTION 1. If an employee who has not given notice of his claim of common law rights of action, as provided in Part I, section five, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the association, as hereinafter provided, if his employer is a subscriber at the time of the injury.

SEC. 2. If the employee is injured by reason of his serious and wilful misconduct, he shall not receive compensation.

SEC. 3 [as amended by section 1 of chapter 571, Acts of 1912]. If the employee is injured by reason of the serious and wilful misconduct of a subscriber or of any person regularly entrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In such case the subscriber shall repay to the association the extra compensation paid to the employee. If a claim is made under this section the subscriber shall be allowed to appear and defend against such claim only.

SEC. 4. No compensation shall be paid under this act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

SEC. 5. During the first two weeks after the injury, the association shall furnish reasonable medical and hospital services, and medicines when they are needed.

SEC. 6. If death results from the injury, the association shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury. If the employee leaves dependents only partly dependent upon his earnings for support

## Massachusetts

at the time of his injury, the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury.

SEC. 7. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives at the time of his death.

(b) A husband upon a wife with whom he lives at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

SEC. 8. If the employee leaves no dependents, the association shall pay the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

SEC. 9. While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to one half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be

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Massachusetts

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greater than five hundred weeks, nor the amount more than three thousand dollars.

SEC. 10. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to one half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

SEC. 11 [as amended by section 2 of chapter 571, Acts of 1912, and by section 1 of chapter 445, Acts of 1913, and by section 1 of chapter 696, Acts of 1913]. In case of the following specified injuries the amounts hereinafter named shall be paid in addition to all other compensation:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one-tenth of normal vision in both eyes with glasses, one-half of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or the reduction to one-tenth of normal vision in either eye with glasses, one half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

(e) The additional amounts provided for in this section in case of the loss of a hand, foot, thumb, finger or toe shall also be paid for the number of weeks above specified, in case the injury is such

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Massachusetts

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that the hand, foot, thumb, finger or toe is not lost but is so injured as to be permanently incapable of use.

SEC. 12. No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the association be considered in fixing the compensation under this act.

SEC. 13. The compensation payable under this act in case of the death of the injured employee shall be paid to his legal representative; or, if he has no legal representative, to his dependents; or, if he leaves no dependents, to the persons to whom payment of the expenses for the last sickness and burial are due. If the payment is made to the legal representative of the deceased employee, it shall be paid by him to the dependents or other persons entitled thereto under this act.

SEC. 14. If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

SEC. 15. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the association or subscriber as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

SEC. 16 [as amended by chapter 172, Acts of 1912, and section 3 of chapter 571, Acts of 1912]. The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury, and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf. Any form of written communication signed by any person who may give the notice as above provided, which contains the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice.

## Massachusetts

SEC. 17. The notice shall be served upon the association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

SEC. 18. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead and the association was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury.

SEC. 19 [as amended by section 4 of chapter 571, Acts of 1912]. After an employee has received an injury, and from time to time thereafter during the continuance of his disability he shall, if so requested by the association or subscriber, submit himself to an examination by a physician or surgeon authorized to practise medicine under the laws of the commonwealth, furnished and paid for by the association or subscriber. The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited.

SEC. 20. No agreement by an employee to waive his rights to compensation under this act shall be valid.

SEC. 21. No payment under this act shall be assignable or subject to attachment, or be liable in any way for any debts.

SEC. 22. Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the industrial accident board.

SEC. 23 [as amended by section 5 of chapter 571, Acts of 1912]. The claim for compensation shall be in writing and shall state



## Massachusetts

the time, place, cause and nature of the injury; it shall be signed by the person injured or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf, and shall be filed with the industrial accident board. The failure to make a claim within the period prescribed by section fifteen shall not be a bar to the maintenance of proceedings under this act if it is found that it was occasioned by mistake or other reasonable cause.

## PART III

## PROCEDURE

SECTION 1 [as amended by section 6 of chapter 571, Acts of 1912]. There shall be an industrial accident board consisting of five members, to be appointed by the governor, by and with the advise and consent of the council, one of whom shall be designated by the governor as chairman. The term of office of members of this board shall be five years, except that when first constituted one member shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed every year for the full term of five years.

SEC. 2 [as amended by section 7 of chapter 571, Acts of 1912]. The salaries and expenses of the board shall be paid by the commonwealth. The salary of the chairman shall be five thousand dollars a year, and the salary of the other members shall be forty-five hundred dollars a year each. The board may appoint a secretary at a salary of not more than three thousand dollars a year, and may remove him. It shall also be allowed an annual sum, not exceeding ten thousand dollars, for clerical service, and traveling and other necessary expenses. The board shall be provided with an office in the state house or in some other suitable building in the city of Boston, in which its records shall be kept.

SEC. 3 [as amended by section 8 of chapter 571, Acts of 1912]. The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to subpoena

## Massachusetts

witnesses, administer oaths, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. The fees for attending as a witness before the industrial accident board shall be one dollar and fifty cents a day, for attending before an arbitration committee fifty cents a day; in both cases five cents a mile for travel out and home.

The superior court shall have power to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records.

SEC. 4 [as amended by section 9 of chapter 571, Acts of 1912]. If the association and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the industrial accident board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of Part III, section eleven. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

SEC. 5 [as amended by section 10 of chapter 571, Acts of 1912]. If the association and the injured employee fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board, and shall act as chairman. The other two members shall be named, respectively, by the two parties. If the subscriber has appeared under the provisions of Part II, section three, the member named by the association shall be subject to his approval. If a vacancy occurs it shall be filled by the party whose representative is unable to act.

The arbitrators appointed by the parties shall be sworn by the chairman as follows: I                      do solemnly swear that I will faithfully perform my duty as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party. So help me God.

SEC. 6 [as amended by section 11 of chapter 571, Acts of 1912]. It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives

## Massachusetts

on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification, as above provided, or after a vacancy has occurred, the board or any member thereof shall fill the vacancy and notify the parties to that effect.

SEC. 7 [as amended by section 12 of chapter 571, Acts of 1912]. The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held in the city or town where the injury occurred, and the decision of the committee, together with a statement of the evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall be enforceable under the provisions of Part III, section eleven.

SEC. 8. The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be five dollars and travelling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

SEC. 9. The arbitrators named by or for the parties to the dispute shall each receive five dollars as a fee for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the association, which shall deduct an amount equal to one third of the sum from any compensation found due the employee.

SEC. 10 [as amended by section 13 of chapter 571, Acts of 1912]. If a claim for a review is filed, as provided in Part III, section seven, the board shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

SEC. 11 [as amended by section 14 of chapter 571, Acts of 1912]. Any party in interest may present certified copies of an order or

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Massachusetts

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decision of the board, a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the board, and all papers in connection therewith, to the superior court for the county in which the injury occurred or for the county of Suffolk, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact, or where the decree is based upon a decision of an arbitration committee or a memorandum of agreement, and that there shall be no appeal from a decree based upon an order or decision of the board which has not been presented to the court within ten days after the notice of the filing thereof by the board. Upon the presentation to it of a certified copy of a decision of the industrial accident board ending, diminishing or increasing a weekly payment under the provisions of Part III, section twelve, the court shall revoke or modify the decree to conform to such decision.

SEC. 12. Any weekly payment under this act may be reviewed by the industrial accident board at the request of the association or of the employee; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts above provided, if the board finds that the condition of the employee warrants such action.

SEC. 13. Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board.

SEC. 14. If the committee of arbitration, industrial accident board, or any court before whom any proceedings are brought under this act determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

SEC. 15 [as amended by section 1 of chapter 448, Acts of 1913]. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect

## Massachusetts

thereof, the employee may at his option proceed either at law against that person to recover damages, or against the association for compensation under this act, but not against both, and if compensation be paid under this act, the association may enforce in the name of the employee, or in its own name and for its own benefit, the liability of such other person, and in case the association recovers a sum greater than that paid by the association to the employee four fifths of the excess shall be paid over to the employee.

SEC. 16 [as amended by section 15 of chapter 571, Acts of 1912]. All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board. The decisions of the industrial accident board shall for all purposes be enforceable under the provisions of Part III, section eleven.

SEC. 17. If a subscriber enters into a contract, written or oral, with an independent contractor to do such subscriber's work, or if such a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work were executed by employees immediately employed by the subscriber, be liable to pay compensation under this act to those employees, the association shall pay to such employees any compensation which would be payable to them under this act if the independent or sub-contractors were subscribers. The association, however, shall be entitled to recover indemnity from any other person who would have been liable to such employees independently of this section, and if the association has paid compensation under the terms of this section, it may enforce in the name of the employee, or in its own name and for the benefit of the association, the liability of such other person. This section shall not apply to any contract of an independent or sub-contractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by the subscriber, nor to any case where the injury occurred elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work for the subscriber or which are under the control or management of the subscriber.

SEC. 18 [as amended by section 1 of chapter 746, Acts of 1913].

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Massachusetts

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Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the occurrence of an injury, a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for the purpose. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. If the disability extends beyond a period of sixty days, the employer shall report to the board at the end of such period that the injured employee is still disabled, and upon the termination of the disability shall file a final supplemental report as provided above.

The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, and occupation of the injured employee, and shall state the date and hour of any accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offence.

Copies of all reports of injuries filed by employers with the industrial accident board and all statistics and data compiled therefrom shall be kept available by the said board and shall be furnished on request to the state board of labor and industries for its own use.

Within sixty days after the termination of the disability of the injured employee, the association or other party liable to pay the compensation provided for by Part II of this act shall file with the board a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

## PART IV

### THE MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION

SECTION 1. The Massachusetts Employees Insurance Association is hereby created a body corporate with the powers provided

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Massachusetts

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in this act and with all the general corporate powers incident thereto.

SEC. 2. The governor shall appoint a board of directors of the association, consisting of fifteen members, who shall serve for a term of one year, or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide.

SEC. 3. Until the first meeting of the subscribers the board of directors shall have and exercise all the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions of this act, which shall be in effect until amended or repealed by the subscribers.

SEC. 4. The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.

SEC. 5. Seven or more of the directors shall constitute a quorum for the transaction of business.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

SEC. 6. Any employer in the commonwealth may become a subscriber.

SEC. 7. The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than ten days before the date fixed for the meeting.

SEC. 8. In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber has five hundred employees to whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employees to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by the right of proxy, more than twenty votes.

SEC. 9. No policy shall be issued by the association until not less than one hundred employers have subscribed, who have not less than ten thousand employees to whom the association may be bound to pay compensation.

SEC. 10. No policy shall be issued until a list of the subscribers,

## Massachusetts

with the number of employees of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within thirty days of the granting of a license to the association by the insurance commissioner to issue policies.

SEC. 11. If the number of subscribers falls below one hundred, or the number of employees to whom the association may be bound to pay compensation falls below ten thousand, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than one hundred who have not less than ten thousand employees, said subscriptions to be subject to the provisions contained in the preceding section.

SEC. 12. Upon the filing of the certificate provided for in the two preceding sections the insurance commissioner shall make such investigation as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies.

SEC. 13. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

SEC. 14. The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

SEC. 15. If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability.

Every subscriber shall pay his proportional part of any assess-



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Massachusetts

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ments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

SEC. 16. The board of directors may, from time to time, by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred.

All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

SEC. 17. Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by the insurance commissioner after such investigation as he may deem necessary. [See chapter 666, Acts of 1912, *post*, p. 1261.]

SEC. 18. The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors of the association shall have free access to all such premises during regular working hours.

Any subscriber or employee aggrieved by any such rule or regulation may petition the industrial accident board for a review, and it may affirm, amend, or annul the rule or regulation.

SEC. 19. If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury.

SEC. 20. Every subscriber shall, as soon as he secures a policy, give notice, in writing or print, to all persons under contract of hire with him that he has provided for payment to injured employees by the association.

SEC. 21 [as amended by section 16 of chapter 571, Acts of 1912]. Every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the association. If an employer ceases to be a subscriber he shall, on or before the day on which his policy expires, give notice thereof in writing or

## Massachusetts

print to all persons under contract with him. In case of the renewal of the policy no notice shall be required under the provisions of this act. He shall file a copy of said notice with the industrial accident board. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the industrial accident board.

SEC. 22. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay to an employee any damages on account of personal injury sustained by such employee during the period of subscription, the association shall pay to the subscriber the full amount of such judgment and the cost assessed therewith, if the subscriber shall have given the association notice in writing of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same.

SEC. 23. The provisions of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and of acts in amendment thereof shall apply to the association, so far as such provisions are pertinent and not in conflict with the provisions of this act, except that the corporate powers shall not expire because of failure to issue policies or make insurance.

SEC. 24. The board of directors appointed by the governor under the provisions of Part IV, section two, may incur such expenses in the performance of its duties as shall be approved by the governor and council. Such expenses shall be paid from the treasury of the commonwealth and shall not exceed in amount the sum of fifteen thousand dollars.

## PART V

## MISCELLANEOUS PROVISIONS

SECTION 1. If an employee of a subscriber files any claim with or accepts any payment from the association on account of personal injury, or makes any agreement, or submits any question to arbitration, under this act, such action shall constitute a release to the subscriber of all claims or demands at law, if any, arising from the injury.

SEC. 2 [as amended by section 1 of chapter 568, Acts of 1913]. The following words and phrases, as used in this act, shall, unless

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Massachusetts

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a different meaning is plainly required by the context, have the following meaning:

"Employer" shall include the legal representative of a deceased employer.

"Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except masters of and seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

"Dependents" shall mean members of the employee's family or next of kin who were wholly or partly dependent upon the earnings of the employee for support at the time of the injury.

"Average weekly wages" shall mean the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where, by reason of the shortness of the time during which the employee has been in the employment of his employer, or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, as being earned by a person in the same grade employed at the same work by the same employer; or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

"Association" shall mean the Massachusetts Employees Insurance Association.

"Subscriber" shall mean an employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor, provided that the association holds a license issued by the insurance commissioner as provided in Part IV, section twelve.

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Massachusetts

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SEC. 3 [as amended by section 17 of chapter 571, Acts of 1912]. Any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II of this act, and when such liability company issues a policy conditioned to pay such compensation the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to the provisions of Parts I, II, III and V and of section twenty-two of Part IV of this act, and shall file with the insurance department its classifications of risks and premiums relating thereto and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply.

SEC. 4 [as amended by section 18 of chapter 571, Acts of 1912]. Sections one hundred and thirty-six to one hundred and thirty-nine, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine are hereby repealed.

SEC. 5. The provisions of this act shall not apply to injuries sustained prior to the taking effect thereof.

SEC. 6 [as amended by section 19 of chapter 571, Acts of 1912]. Part IV of this act shall take effect on the first day of January, nineteen hundred and twelve; sections one to three, inclusive of Part III shall take effect on the tenth day of May, nineteen hundred and twelve; the remainder thereof shall take effect on the first day of July, nineteen hundred and twelve.

## CHAPTER 666, ACTS OF 1912

AN ACT relative to the insurance of compensation to employees for personal injuries received in the course of their employment.

*Be it enacted, etc., as follows:*

SECTION 1. The insurance commissioner may withdraw his approval of any premium or distribution of subscribers given by him to the Massachusetts Employees Insurance Association under the provisions of section seventeen of Part IV of chapter seven hun-

## Massachusetts

dred and fifty-one of the acts of the year nineteen hundred and eleven, or of any premium or rate made by an insurance company and approved by him under the provisions of section three of Part V of said chapter seven hundred and fifty-one as amended by section seventeen of chapter five hundred and seventy-one of the acts of the year nineteen hundred and twelve.

SEC. 2. The notices required by section five of Part I of said chapter seven hundred and fifty-one shall be given in such manner as the industrial accident board may approve.

SEC. 3. This act shall take effect upon its passage. [*Approved May 28, 1912.*]

## CHAPTER 807, ACTS OF 1913

AN ACT to provide for compensating certain public employees for injuries sustained in the course of their employment.

*Be it enacted, etc., as follows:*

SECTION 1. The commonwealth shall and any county, city, town, or district having the power of taxation, may pay the compensation provided by Part II of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto to such laborers, workmen and mechanics employed by it as receive injuries arising out of and in the course of their employment, or, in case of death resulting from any such injury, may pay compensation as provided in sections six, seven and eight of said Part II, and in any amendments thereof, to the persons thereto entitled.

SEC. 2. Procedure under this act and the jurisdiction of the industrial accident board shall be the same as under the provisions of said chapter seven hundred and fifty-one, and the commonwealth or a county, city, town or district which accepts the provisions of this act shall have the same rights in proceedings under said chapter as the association thereby created. The treasurer and receiver general, or the treasurer or officer having similar duties of a county, city, town or district which accepts the provisions of this act, shall pay any compensation awarded for injury to any person in its employment upon proper vouchers without any further authority.

Massachusetts

SEC. 3. Counties, cities, towns, and districts having the power of taxation, may accept the provisions of this act by vote of a majority of those legal voters who vote on the question of its acceptance at an annual meeting or election as hereinafter provided. In towns and districts which have an annual meeting of the legal voters, this act shall be submitted for acceptance to the voters of the town or district at the next annual meeting after its passage. In cities, and in towns which do not have annual meetings, this act shall be submitted to the voters at the next municipal election, and in counties and in districts which do not have an annual meeting, at the next state election after its passage. At every such election, and at every annual meeting where ballots are used, the following question shall be printed on the ballot:

"Shall chapter                      of the acts of nineteen hundred and thirteen, being an act to provide for compensating laborers, workmen and mechanics for injuries sustained in public employment, and to exempt from legal liability counties and municipal corporations which pay such compensation, be accepted by the inhabitants of this (county, city, town, water district, fire district, etc.) of                      ?"

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

The vote shall be canvassed by the county commissioners, city council or commission, or selectmen, or, in the case of a district, by the district commissioners or other governing board of the district. A notice stating the result of the vote shall be posted in the county court house, or city or town hall, or, in the case of a district, in the public building where the employees of the district are paid. Except as provided in section four, a county, city, town or district which accepts the provisions of this act shall not be liable in any action for a personal injury sustained by a laborer, workman or mechanic in the course of his employment by such county, city, town or district, or for death resulting from such injury.

SEC. 4. A laborer, workman or mechanic entering or remaining in the service of a county, city, town or district, who would, if injured, have a right of action against the county, city, town or district by existing law, may, if the county, city, town or district has accepted the provisions of this act, before he enters its service, or accepts them afterward, claim or waive his right of action as

## Massachusetts

provided in section five of Part I of said chapter seven hundred and fifty-one, and shall be deemed to have waived such right of action unless he claims it. Section four of said Part I shall apply to actions by laborers, workmen or mechanics employed by a county, city, town or district which accepts the provisions of this act.

SEC. 5. Any person entitled to receive from the commonwealth or from a county, city, town or district the compensation provided by Part II of said chapter seven hundred and fifty-one, who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both. In case a person entitled to such compensation from the commonwealth or from a county, city, town or district receives by special act a pension for the same injury, he shall forfeit all claim for compensation, and any compensation received by him or paid by the commonwealth or by the county, city, town or district which employs him for medical or hospital services rendered to him may be recovered back in an action at law. No further payment shall be awarded by vote or otherwise to any person who has claimed and received compensation under this act.

SEC. 6. This act shall apply to all laborers, workmen and mechanics in the service of the commonwealth or of a county, city or town, or district having the power of taxation, under any employment or contract of hire, expressed or implied, oral or written, including those employed in work done in performance of governmental duties as well as those employed in municipal enterprises conducted for gain or profit. For the purposes of this act all laborers, workmen and mechanics paid by the commonwealth, but serving under boards or commissions exercising powers within defined districts, shall be deemed to be in the service of the commonwealth.

SEC. 7. The provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, and acts in amendment thereof and in addition thereto shall not apply to any persons other than laborers, workmen and mechanics employed by counties, cities, towns or districts having the power of taxation.

SEC. 8. This act shall take effect upon its passage. [*Approved June 16, 1913.*]

## CHAPTER 813, ACTS OF 1913

AN ACT relative to industrial accidents and occupational diseases.

*Be it enacted, etc., as follows:*

SECTION 1. The state board of labor and industries and the industrial accident board, sitting jointly, shall investigate from time to time employments and places of employment within the commonwealth, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all such employments or places of employment; and also shall determine what suitable devices or other reasonable means or requirements for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments or places of employment; and shall make reasonable rules, regulations and orders for the prevention of accidents and the prevention of industrial or occupational diseases in such employments or places of employment. Such rules, regulations and orders may apply to both employer and employee.

SEC. 2. Before the adoption of any rule or regulation by the said joint board a hearing shall be given, and not less than ten days before the hearing a notice thereof shall be published in at least three newspapers, of which one shall be published in the city of Boston. Such rules, or regulations shall upon adoption be published in like manner, and shall take effect thirty days after such publication, or at such later time as the board may fix. Before the adoption of any order a hearing shall be given thereon, of which a notice of not less than ten days shall be given to the individuals, firms, corporations or associations affected thereby.

SEC. 3. The joint board may appoint committees, on which employers and employees shall be represented, to investigate and recommend rules and regulations.

SEC. 4. The joint board shall make such general arrangements between the two boards as will prevent duplication of effort but the inspection and investigation carried on by the state board of labor and industries shall be a regular and systematic inspection and investigation of all places of employment and the conditions



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Massachusetts

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of safety and health pertaining thereto, and the inspection and investigation carried on by the industrial accident board shall be that relating to causes of injuries for which compensation may be claimed.

SEC. 5. Any member or employee of either board may enter any place of employment for any purpose under this act at any time when the place of employment is being used for business purposes.

SEC. 6. The joint board may require every physician treating a patient whom he believes to be suffering from any ailment or disease contracted as a result of the nature, circumstances or conditions of the patient's employment to report such information relating thereto as it may require, within such time as it may fix, to the state board of labor and industries, and it may issue a list of such diseases which shall be regularly reported upon by physicians and may add to or change such list at any time. Copies of all such reports and all statistics and data compiled therefrom shall be kept by the state board of labor and industries, and shall be furnished on request to the industrial accident board and the state board of health.

SEC. 7. All hearings by the joint board shall be open to the public. The chairman of the state board of labor and industries and the chairman of the industrial accident board shall act alternately as chairman of the joint board, and the said board may designate one of the employees of either board to act as secretary.

SEC. 8. Section eight of chapter seven hundred and twenty-six of the acts of the year nineteen hundred and twelve is hereby amended by adding at the end of the first paragraph thereof the words: or persons especially qualified by technical education in matters relating to health and sanitation.

SEC. 9. The industrial accident board may appoint and remove not more than six inspectors, subject to the laws relating to the appointment and removal of employees in the classified civil service. They shall be required to pass examinations of a comprehensive and practical character based upon the particular requirements of the kinds of work to be done, shall be graded in such manner as the board may deem expedient, and shall receive such salaries as the board, with the approval of the governor and council, may fix.

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Massachusetts

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SEC. 10. If any rule or regulation made under authority of section eighteen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven conflicts with or differs from a rule or regulation of the joint board, the rule or regulation of the joint board shall prevail.

SEC. 11. There may be expended annually by the joint board in carrying out the provisions of this act such sums as the general court may appropriate. The joint board shall annually submit to the auditor of the commonwealth such statements of estimates to cover its expenses as are required by section three of chapter seven hundred and nineteen of the acts of the year nineteen hundred and twelve.

SEC. 12. The following terms and phrases, as used in this act, shall have the following meanings:

(a) The term "employment" shall mean and include any trade, occupation or branch of industry, any particular method or process used therein, and the service of any particular employer; but shall not include private domestic service or service as a farm laborer.

(b) The phrase "place of employment" shall mean and include every place whether indoors or out or underground and the premises appurtenant thereto, into, in or upon which any employee goes or remains either temporarily or regularly in the course of his employment.

(c) The terms "safe" and "safety", as used in this act, shall be held to relate to such freedom from danger to the life, safety and health of employees as the nature of the employment will reasonably permit.

(d) The terms "industrial disease" and "occupational disease" shall mean and include any ailment or disease caused by the nature, circumstances or conditions of the employment.

SEC. 13. Whoever violates any reasonable rule, regulation, order or requirement made by the joint board under authority hereof, shall be punished by a fine of not more than one hundred dollars for each offence.

SEC. 14. All acts and parts of acts inconsistent herewith are hereby repealed; but this provision shall not be construed to take away any of the existing powers of the industrial accident board, the board of railroad commissioners, the state board of health, the board of boiler rules, the boiler inspection department of the

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Massachusetts

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district police, or the building inspection department of the district police, or any power given to the state board of labor and industries by chapter seven hundred and twenty-six of the acts of the year nineteen hundred and twelve.

SEC. 15. This act shall take effect upon its passage. [*Approved June 16, 1913.*]

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## MICHIGAN

(L. 1912, No. 10; as am'd by L. 1913, approved April 10, 1913)

An act to promote the welfare of the people of this State, relating to the liability of employers for injuries or death sustained by their employés, providing compensation for the accidental injury to or death of employés and methods for the payment of the same, establishing an industrial accident board, defining its powers, providing for a review of its awards, making an appropriation to carry out the provisions of this act, and restricting the right to compensation or damages in such cases to such as are provided by this act.

The people of the State of Michigan enact:

### PART I

#### MODIFICATION OF REMEDIES

SECTION 1. In an action to recover damages for personal injury sustained by an employé in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense:

(a) That the employé was negligent, unless and except it shall appear that such negligence was willful;

(b) That the injury was caused by the negligence of a fellow employé;

(c) That the employé had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.

SEC. 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by household domestic servants and farm laborers.

SEC. 3. The provisions of section one shall not apply to actions to recover damages for the death of, or for personal injuries sus-

tained by employ  s of any employer who has elected, with the approval of the industrial accident board hereinafter created, to pay compensation in the manner and to the extent hereinafter provided.

SEC. 4. Any employer who has elected, with the approval of the industrial accident board hereinafter created, to pay compensation as hereinafter provided, shall not be subject to the provisions of section one; nor shall such employer be subject to any other liability whatsoever, save as herein provided for the death of or personal injury to any employ  , for which death or injury compensation is recoverable under this act, except as to employ  s who have elected in the manner hereinafter provided not to become subject to the provisions of this act.

SEC. 5. The following shall constitute employers subject to the provisions of this act:

1. The State, and each county, city, township, incorporated village and school district therein, and each incorporated public board, or public commission in this State authorized by law to hold property and to sue or be sued generally; (am'd by L. 1913, approved April 10, 1913).

2. Every person, firm and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employ   for which compensation under this act may be claimed, shall in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in the next section.

SEC. 6. Such election on the part of the employers mentioned in subdivision two of the preceding section, shall be made by filing with the industrial accident board hereinafter provided for, a written statement to the effect that such employer accepts the provisions of this act, and that he adopts, subject to the approval of said board, one of the four methods provided for the payment of the compensation hereinafter specified. The filing of such statement and the approval of said board shall operate, within the meaning of the preceding section, to subject such employer to the provisions of this act and all acts amendatory thereof for the term

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Michigan

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of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least thirty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act: Provided, however, That such employer so electing to become subject to the provisions of this act shall, within ten days after the approval by said board of his election filed as aforesaid, post in a conspicuous place in his plant, shop, minor place of work, or if such employer be a transportation company, at its several stations and docks, notice in the form as prescribed and furnished by the industrial accident board to the effect that he accepts and will be bound by the provisions of this act.

· SEC. 7. The term "employé" as used in this act shall be construed to mean:

1. Every person in the service of the State, or of any county, city, township, incorporated village or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, township, incorporated village or school district therein: Provided, That one employed by a contractor who has contracted with a county, city, township, incorporated village, school district or the State, through its representatives, shall not be considered an employé of the State, county, city, township, incorporated village or school district which made the contract;

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the State who, for the purposes of this act, shall be considered the same and have the same power to contract as adult employés, but not including any person whose employment is but casual or is not in the usual course of the trade, business, profession or occupation of his employer.

SEC. 8. Any employé as defined in subdivision one of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employé as defined in subdivision two of the preceding section shall be deemed to have accepted and shall be subject to the provisions of this act and of any act

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Michigan

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amendatory thereof if, at the time of the accident upon which liability is claimed:

1. The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

2. Such employé shall not, at the time of entering into this contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act; or, in the event that such contract of hire was made before such employer became subject to the provisions of this act, such employé shall have given to his employer notice in writing that he elects not to be subject to such provisions, or without giving either of such notices shall have remained in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act. An employé who has given notice to his employer in writing as aforesaid that he elects not to be subject to the provisions of this act, may waive such claim by a notice in writing, which shall take effect five days after it is delivered to the employer or his agent.

## PART II

### COMPENSATION

SECTION 1. If an employé who has not given notice of his election not to be subject to the provisions of this act, as provided in part one, section eight, or who has given such notice and has waived the same as hereinbefore provided, receives a personal injury arising out of and in the course of his employment by an employer who is at the time of such injury subject to the provisions of this act, he shall be paid compensation in the manner and to the extent hereinafter provided, or in case of his death resulting from such injuries such compensation shall be paid to his dependents as hereinafter defined.

SEC. 2. If the employé is injured by reason of his intentional and willful misconduct, he shall not receive compensation under the provisions of this act.

SEC. 3. No compensation shall be paid under this act for any injury which does not incapacitate the employé for a period of at

## Michigan

least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury: Provided, however, That if such disability continues for eight weeks or longer, such compensation shall be computed from the date of the injury.

SEC. 4. During the first three weeks after the injury the employer shall furnish, or cause to be furnished, reasonable medical and hospital services and medicines when they are needed.

SEC. 5. If death results from the injury, the employer shall pay, or cause to be paid, subject, however, to the provisions of section twelve hereof, in one of the methods hereinafter provided, to the dependents of the employé, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week for a period of three hundred weeks from the date of the injury. If the employé leaves dependents only partly dependent upon his earnings for support at the time of his injury, the weekly compensation to be paid as aforesaid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employé to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employé before his death the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury.

SEC. 6. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she lives at the time of his death;

(b) A husband upon a wife with whom he lives at the time of her death;

(c) A child or children under the age of sixteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of dependency, in whole or in part, shall be determined in ac-



## Michigan

cordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent, unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother or sister.

SEC. 7. Questions as to who constitute dependents and the extent of their dependency shall be determined, as of the date of the accident to the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. In case of the death of one such dependent his proportion of such compensation shall be payable to the surviving dependents pro rata. Upon the death of all such dependents compensation shall cease. No person shall be excluded as a dependent who is a non-resident alien. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employé.

SEC. 8. If the employé leaves no dependents the employer shall pay, or cause to be paid as hereinafter provided, the reasonable expense of his last sickness and burying, which shall not exceed two hundred dollars.

SEC. 9. While the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid as hereinafter provided, to the injured employé a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor shall the total amount of all compensation exceed four thousand dollars.

SEC. 10. While the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid as hereinafter

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Michigan

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provided, to the injured employé a weekly compensation equal to one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury. In cases included by the following schedule the disability in each such case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified therein, to-wit:

For the loss of a thumb, fifty per centum of the average weekly wages during sixty weeks;

For the loss of a first finger, commonly called index finger, fifty per centum of average weekly wages during thirty-five weeks;

For the loss of a second finger, fifty per centum of average weekly wages during thirty weeks;

For the loss of a third finger, fifty per centum of average weekly wages during twenty weeks;

For the loss of a fourth finger, commonly called little finger, fifty per centum of average weekly wages during fifteen weeks;

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified;

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: Provided, however, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

For the loss of a great toe, fifty per centum of average weekly wages during thirty weeks;

For the loss of one of the toes other than a great toe, fifty per centum of average weekly wages during ten weeks;

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified;

The loss of more than one phalange shall be considered as the loss of the entire toe;

For the loss of a hand, fifty per centum of average weekly wages during one hundred and fifty weeks;

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Michigan

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For the loss of an arm, fifty per centum of average weekly wages during two hundred weeks;

For the loss of a foot, fifty per centum of average weekly wages during one hundred and twenty-five weeks;

For the loss of a leg, fifty per centum of average weekly wages during one hundred and seventy-five weeks;

For the loss of an eye, fifty per centum of average weekly wages during one hundred weeks;

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of section nine.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated.

SEC. 11. The term "average weekly wages" as used in this act is defined to be one fifty-second part of the average annual earnings of the employé. If the injured employé has not worked in the employment in which he was working at the time of the accident, whether for the employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed. If the injured employé has not worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place, shall have earned in such employment during the days when so employed. In cases where the foregoing methods of arriving at the average annual earnings of the injured employé cannot reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment, in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time. The fact that an employé has

## Michigan

suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the provisions of this section. The weekly loss in wages referred to in this act shall consist of such percentage of the average weekly earnings of the injured employé computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

SEC. 12. The death of the injured employé prior to the expiration of the period within which he would receive such weekly payments shall be deemed to end such disability, and all liability for the remainder of such payments which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity:

If the injury so received by such employé was the proximate cause of his death, and such deceased employé leaves dependents, as hereinbefore specified, wholly or partially dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this act to such deceased employé, to make the total compensation for the injury and death exclusive of medical and hospital services and medicines furnished as provided in section four hereof, equal to the full amount which such dependents would have been entitled to receive under the provisions of section five hereof in case the accident had resulted in immediate death, and such benefits shall be payable in weekly installments in the same manner and subject to the same terms and conditions in all respects as payments made under the provisions of said section five.

SEC. 13. No savings or insurance of the injured employé, nor any contribution made by him to any benefit fund or protective

## Michigan

association independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided, be considered in fixing the compensation under this act.

SEC. 14. If an injured employé is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

SEC. 15. No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury shall have been given to the employer three months after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employé, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

SEC. 16. The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury; and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his dependents or by a person in their behalf.

SEC. 17. The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

SEC. 18. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, or the commissioner of insurance; as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under this act, if it be shown that the employer had notice or knowledge of the injury.

SEC. 19. After an employé has given notice of an injury, as provided by this act, and from time to time thereafter during the continuance of his disability, he shall, if so requested by the em-

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Michigan

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ployer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the State, furnished and paid for by the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be. The employé shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited. Any physician who shall make or be present at any such examination may be required to testify under oath as to the results thereof.

SEC. 20. No agreement by an employé to waive his rights to compensation under this act shall be valid.

SEC. 21. No payment under this act shall be assignable or subject to attachment or garnishment, or be held liable in any way for any debts. In case of insolvency every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor, paramount to all other claims or liens except for wages and taxes, and such liens shall be enforced by order of the court.

SEC. 22. Whenever any weekly payment has been continued for not less than six months, the liability therefor may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the industrial accident board, and said board may at any time direct in any case, if special circumstances be found which in its judgment require the same, that the deferred payments be commuted on the present worth thereof at five per cent per annum to one or more lump sum payments, and that such payments shall be made by the employer or the insurance company carrying such risk, or commissioner of insurance, as the case may be.

SEC. 23. All compensation paid or to be paid under this act by any employer, being an incorporated public board, or public commission shall be treated as part of the necessary operating expenses thereof, and all sums and amounts of money required therefor may be embraced in any requisition authorized by law to be made upon any other public corporation, body or officer for moneys for the

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Michigan

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use of such employer in addition to all other sums authorized by law, or separate requisition therefor may be made in like manner; and the same shall be allowed and paid to such employer in the same manner as other moneys are required to be allowed and paid for the use of such employer; or the same may be embraced in any report or requirement authorized by law to be made to or upon any other public corporation, or officer, of sums of money to be levied as taxes for the use of such employer, in addition to all other sums authorized by law, or separate report or requirement thereof may be made in like manner; and the same shall be levied, collected and paid as other amounts for taxes are required to be levied, collected and paid for the use of such employer. (Added by L. 1913, approved April 10, 1913.)

### PART III

#### PROCEDURE

SECTION 1. There is hereby created a board which shall be known as the Industrial Accident Board, consisting of three members to be appointed by the governor, by and with the consent of the senate, one of whom shall be designated by the governor as chairman. Appointments to fill vacancies may be made during recesses of the senate, but shall be subject to confirmation by the senate at the next ensuing session of the legislature. The term of office of members of this board shall be six years, except that when first constituted one member shall be appointed for two years, one for four years, and one for six years. Thereafter one member shall be appointed every second year for the full term of six years. No more than two members of this board shall belong to the same political party.

SEC. 2. The salary of each of the members so appointed by the governor shall be three thousand five hundred dollars per year. The board may appoint a secretary at a salary of not more than two thousand five hundred dollars a year, and may remove him. The board shall be provided with an office in the capitol, or in some other suitable building in the city of Lansing, in which its records shall be kept, and it shall also be provided with necessary office furniture, stationery and other supplies. It shall provide itself with a seal for the authentication of its orders, awards and pro-

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Michigan

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ceedings, upon which shall be inscribed the words "Industrial Accident Board—Michigan—Seal." It shall employ such assistants and clerical help as it may deem necessary and fix the compensation of all persons so employed: Provided, That the average compensation paid to such employé shall not exceed one thousand dollars per annum for each person employed, and all such clerical assistants shall be subject to existing laws regulating the grading and compensation of department clerks. The members of the board and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the board; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board before payment is made.

All such salaries and expenses when audited and allowed by the board of state auditors, shall be paid by the state treasurer out of the general fund, upon warrant of the auditor general.

SEC. 3. The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to administer oaths, subpoena witnesses and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

SEC. 4. The board shall cause to be printed and furnish free of charge to any employer or employé such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of any employer who shall file a statement of election under this act, and the date of the filing thereof and its approval by such board, and a separate book in which shall be entered and indexed the name of every employer who shall file his notice of withdrawal of said election, and the date of the filing thereof; and books in which shall be recorded all orders and awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause such notice of the fact to be given by requiring



## Michigan

said employer to post such notice as hereinbefore provided; and the board shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and notices of withdrawal of election, and of the time of the filing of the same, shall conclusively be imputed to all employés.

SEC. 5. If the employer, or the insurance company carrying such risk, or commissioner of insurance, as the case may be, and the injured employé reach an agreement in regard to compensation under this act, a memorandum of such agreement shall be filed with the industrial accident board, and, if approved by it, shall be deemed final and binding upon the parties thereto. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

SEC. 6. If the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, and the employé fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board, who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board, and shall act as chairman. The other two members shall be named respectively by the two parties.

SEC. 7. It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification as above provided, the board or any member thereof shall fill the vacancy and notify the parties to that effect.

SEC. 8. The committee of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held at the locality where the injury occurred, and the decision of the committee shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall stand as the decision of the industrial accident board: Provided, That said industrial accident

## Michigan

board may, for sufficient cause shown, grant further time in which to claim such review.

SEC. 9. The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employé and to report. The fee for this service shall be five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

SEC. 10. The arbitrators named by or for the parties to the dispute shall each receive five dollars a day for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees of such arbitrators and other costs of such arbitration, not exceeding, however, the taxable costs allowed in suits at law in the circuit courts of this State, shall be fixed by the board and paid by the State as the other expenses of the board are paid. The fees and the payment thereof of all attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board.

SEC. 11. If a claim for review is filed, as provided in part three, section eight, the industrial accident board shall promptly review the decision of the committee of arbitration and such records as may have been kept of its hearings, and shall also if desired hear the parties, together with such additional evidence as they may wish to submit, and file its decision therein with the records of such proceedings. Such review and hearing may be held in its office at Lansing or elsewhere as the board shall deem advisable.

SEC. 12. The findings of fact made by said industrial accident board acting within its powers, shall, in the absence of fraud, be conclusive, but the supreme court shall have power to review questions of law involved in any final decision or determination of said industrial accident board: Provided, That application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or by any other method permissible under the rules and practice of said court or the laws of this State, and to make such further orders in respect thereto as justice may require.

SEC. 13. Either party may present a certified copy of the decision of such industrial accident board approving agreements of settlement as provided in part three, section five hereof, or of the

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Michigan

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decision of such committee of arbitration when no claim for review is made as provided in part three, section eight, or of the decision of such industrial accident board when a claim for review is filed as provided in part three, section eleven, providing for payment of compensation under this act, to the circuit court for the county in which such accident occurred, whereupon said court shall, without notice, render a judgment in accordance therewith against said employer and also against any insurance company carrying such risk under the provisions of this act; which judgment, until and unless set aside shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

SEC. 14. Any weekly payment under this act may be reviewed by the industrial accident board at the request of the employer or the insurance company carrying such risks, or the commissioner of insurance as the case may be, or the employé; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts above provided, if the board finds that the facts warrant such action.

SEC. 15. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages, or against the employer for compensation under this act, but not against both, and if compensation be paid under this act the employer may enforce for his benefit or for that of the insurance company carrying such risk, or the commissioner of insurance, as the case may be, the liability of such other person.

SEC. 16. All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board.

SEC. 17. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for that purpose. The said reports shall contain

## Michigan

the name and nature of the business of the employer, the location of his establishment or place of work, the name, age, sex and occupation of the injured employé, and shall state the time, the nature and cause of the injury, and such other information as may be required by the board. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offense.

SEC. 18. The board may appoint an assistant secretary at a salary of not more than fifteen hundred dollars a year to be paid as other state employés are paid.

## PART IV

## METHOD OF PAYMENT

SECTION 1. Every employer filing his election to become subject to the provisions of this act, as hereinbefore set forth, shall have the right to specify at the time of doing so, subject to the approval of said industrial accident board, which of the following methods for the payment of such compensation he desires to adopt, to-wit:

First. Upon furnishing satisfactory proof to said board of his solvency and financial ability to pay the compensation and benefits hereinbefore provided for, to make such payments directly to his employés, as they may become entitled to receive the same under the terms and conditions of this act; or

Second. To insure against such liability in any employers' liability company authorized to take such risks in the State of Michigan; or

Third. To insure against such liability in any employers' insurance association organized under the laws of the State of Michigan; or

Fourth. To request the commissioner of insurance of the State of Michigan to assume the administration of the disbursement of such compensation exclusive of that provided for in part two, section four herein, and the collection of the premiums and assessments necessary to pay the same, as provided in part five hereof. Said board, however, shall have the right, from time to time to review and alter its decision in approving the election of such employer to adopt any one of the foregoing methods of payment, if

## Michigan

in its judgment such action is necessary or desirable to secure and safeguard such payments to employés.

SEC. 2. Nothing herein shall affect any existing contract for employers' liability insurance or affect the organization of any mutual or other insurance company, or any arrangement now existing between employers and employés, providing for the payment to such employés, their families, dependents or representatives, sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name in the manner provided in this act the liability of any insurance company or of any employers' association organized under the laws of the State of Michigan, or the commissioner of insurance, who may, in whole or in part, have insured the liability for such compensation: Provided, however, That payment in whole or in part of such compensation by either the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, shall, to the extent thereof be a bar to recovery against the other, of the amount so paid.

SEC. 3. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract for insurance, unless such company shall have been approved by the commissioner of insurance as provided by law.

SEC. 4. Any employer against whom liability may exist for compensation under this act may, with the approval of the industrial accident board, be relieved therefrom by:

1. Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per centum per annum, with such trust company of this State as shall be designated by the employé, or by his dependents, in case of his death, and such liability exists in their favor, or in default of such

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Michigan

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designation by him, or them, after ten days' notice in writing from the employer, with such trust company of this State as shall be designated by the industrial accident board; or

2. By the purchase of an annuity, within the limitation provided by law, in any insurance company granting annuities and licensed in this State, which may be designated by the employé, or his dependents, or the industrial accident board, as provided in subsection one of this section.

## PART V

### ADMINISTRATION BY COMMISSIONER OF INSURANCE

SECTION 1. Whenever five or more employers, who have become subject to the provisions of this act, and who have on their pay rolls an aggregate number of not less than three thousand employés, shall in writing request the commissioner of insurance so to do, he shall assume charge of levying and collection from them such premium and dividends as may from time to time be necessary to pay the sums which shall become due their employés, or dependents of their employés, as compensation under the provisions of this act, and also the expense of conducting the administration of such funds; and shall disburse the same to the persons entitled to receive such compensation under the provisions of this act: Provided, however, That neither the commissioner of insurance nor the State of Michigan shall become or be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the funds so collected and received by him as hereinafter provided.

SEC. 2. The commissioner of insurance shall immediately upon assuming the administration of the collection and disbursement of the moneys referred to in the preceding section, cause to be created in the State treasury a fund to be known as "accident fund." Each such employer shall contribute to this fund to the extent of such premiums or assessments as the commissioner shall deem necessary to pay the compensation accruing under this act to employés of such employers or to their dependents, which premiums and assessments shall be levied in the manner and proportion hereinafter set forth. There shall be maintained in said accident fund a sufficient amount of cash to pay current losses and expenses,

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Michigan

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and the balance may be invested by the Commissioner of Insurance and the state treasurer acting together, in such securities as are specified in section four of act number seventy-seven of the Public Acts of eighteen hundred sixty nine, for deposit by insurance companies with the State treasurer. All such securities shall be purchased and may be sold at such time, in such manner and in accordance with such rules and conditions as may be prescribed and required by the joint action of said insurance commissioner and State treasurer: Provided, however, that no such investment shall be made nor any securities sold or disposed of except by and with the consent and approval in writing of the board of state auditors. The commissioner of insurance shall give a good and sufficient bond in the sum of twenty-five thousand dollars, executed by some surety company authorized to do business in the State of Michigan, covering the collection and disbursement of all moneys that may come into his hands under the provisions of this act. The premium on said bond shall be paid out of the general funds of the State on an order of the auditor general. Said bond must be approved by the board of state auditors. (*As am'd by L. 1913, approved April 17, 1913.*)

• SEC. 3. It is the intention that the amounts raised for such fund shall ultimately become neither more nor less than self-supporting, and the premiums or assessments levied for such purpose shall be subject to readjustment from time to time by the commissioner of insurance as may become necessary.

SEC. 4. The commissioner of insurance may classify the establishments or works of such employers in groups in accordance with the nature of the business in which they are engaged and the probable risk of injury to their employes under existing conditions. He shall determine the amount of the premiums or assessments which such employers shall pay to said accident fund, and may prescribe when and in what manner such premiums and assessments shall be paid, and may change the amount thereof both in respect to any or all of such employers from time to time, as circumstances may require, and the condition of their respective plants, establishments or places of work in respect to the safety of their employes may justify, but all such premiums or assessments shall be levied on a basis that shall be fair, equitable and just as among such employers. At the beginning of each fiscal year it shall be the duty

## Michigan

of the commissioner of insurance to call for the required payment of premiums in such amounts as shall, together with any balance in the accident fund, in his judgment, and subject to the approval of said industrial accident board, be sufficient to enable him to pay all sums which may become due and payable to the employés of any such employer who has become subject to the provisions of part five of this act, and also the expenses of administering such funds during the following year.

SEC. 5. If any employer shall make default in the payment of any contribution, premium or assessment required as aforesaid by the commissioner of insurance, the sum due shall be collected by an action at law in the name of the State as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In case any injury happens to any of the workmen of such employer during the period of any default in the payment of any such premium, assessment or contribution, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman, or by his dependents in case death results from such accident, as if he had not elected to become subject to this act. In case, however, the amount actually collected in by such injured workman or his dependents shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of said accident fund. If the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section shall have the choice, to be exercised before suit, of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the State for the benefit of the accident fund.

SEC. 6. Any employer subject to the provisions of part five of this act, who has complied with all the rules, regulations and demands of the industrial accident board and the commissioner of insurance, may withdraw therefrom at the expiration of the period of one year for which he has elected to become subject to the provisions of this act: Provided, however, That he shall give written notice of such withdrawal to said commissioner of insurance at least thirty days before the expiration of such period: And Provided.



## Michigan

further, That if at the time of such withdrawal liability may exist against employer for compensation to employes who have been theretofore killed or injured, as hereinbefore provided, such employer shall either relieve himself and the commissioner of insurance from such liability in the manner provided in part four, section four of this act, or shall otherwise protect and indemnify said commissioner of insurance against such liability in such reasonable manner as he may require.

SEC. 7. In case any controversy shall arise between the commissioner of insurance and any employer subject to the provisions of part five of this act, relative to any rule or regulation adopted by said commissioner of insurance, or any decision made by him in respect to the collection, administration and disbursement of such funds, or in case any controversy shall arise between any employe claiming compensation under the provisions of this act and said commissioner of insurance, all such controversies of every kind and nature shall be subject to review in like manner and with the same force and effect in all respects as is heretofore provided in respect to differences arising through the administration of such funds by the employer, or by a liability insurance company or by an employers' mutual insurance association.

SEC. 8. The books, records and pay rolls of each employer subject to the provisions of part five of this act shall always be open to inspection by the commissioner of insurance, or his duly authorized agent or representative, for the purpose of ascertaining the correctness of the amount of the pay roll reported, the number of men employed, and such other information as said commissioner may require in the administration of said funds. Refusal on the part of any such employer to submit said books, records and pay rolls for such inspection, shall subject the offending employer to a penalty of fifty dollars for each offense, to be collected by civil action in the name of the State and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

SEC. 9. The commissioner of insurance shall issue proper receipts for all moneys so collected and received from employers, as aforesaid, shall take receipts for all sums paid to employes for compensation under the provisions of this act, and shall keep full and complete records of all business transacted by him in the ad-

## Michigan

ministration of such funds. He may employ such deputies and assistants and clerical help as may be necessary, and as the board of state auditors may authorize, for the proper administration of said funds and the performance of the duties imposed upon him by the provisions of this act, at such compensation 'as may be fixed by said board of state auditors, and may also remove them. The commissioner of insurance and such deputies and assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the board, but all such salaries and expenses so authorized by the provisions of this act shall, when audited and approved by the board of state auditors, be charged to and paid out of said accident fund. He shall include in his annual report a full and correct statement of the administration of such fund, showing its financial status and outstanding obligations, the claims, and the amount paid on each claim, claims not paid, claims contested and why, and general statistics in respect to all business transacted by him under the provisions of this act. (*As am'd by L. 1913, approved April 17, 1913.*)

SEC. 10. All payments on account of injuries to employes from said accident fund shall be made only upon the certificate of the commissioner of insurance, which certificate shall be in accordance with the agreement for compensation as approved by the industrial accident board; such certificate shall be filed with the auditor general, who shall thereupon draw his warrant on the State treasurer against said accident fund. If at any time there shall not be sufficient money in said fund wherewith to pay the same, the employer on account of whose workmen it was that such warrant was drawn, shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid, with interest thereon at the legal rate, from the date of such payment to the date such next following contribution becomes payable, and if the amount of the credit shall exceed the amount of the contribution, he shall be repaid such excess. (*As am'd by L. 1913, approved April 17, 1913.*)

SEC. 11. If this act shall be thereafter repealed, all moneys which are in the accident fund at the time of such repeal shall be subject to disposition under the direction of the circuit court for the county of Ingham, with due regard, however, to the obligation incurred and existing to pay compensation under the provisions of this act.

## PART VI

## MISCELLANEOUS PROVISIONS

SECTION 1. If the employé, or his dependents, in case of his death, of any employer subject to the provisions of this act files any claim with, or accepts any payment from such employer, or any insurance company carrying such risks, or from the commissioner of insurance on account of personal injury, or makes any agreement, or submits any question to arbitration under this act, such action shall constitute a release to such employer of all claims or demands at law, if any, arising from such injury.

SEC. 2. If the provisions of this act relating to compensation for injuries to or death of workmen shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal, or the final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury.

SEC. 3. This act shall not affect any cause of action existing or pending before it went into effect.

SEC. 4. The provisions of this act shall apply to employers and workmen engaged in intrastate commerce, and also to those engaged in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this State, may, subject to the approval of the industrial accident board, and so far as not forbidden by any act of congress, voluntarily accept and become bound by the provisions of this act in like manner and with the same force and effect in all respects as is hereinbefore provided for other employers and their workmen.

SEC. 5. All acts or parts of acts inconsistent with this act are to be deemed replaced by this act, and to that end are hereby repealed.

## Michigan

SEC. 6. The legislature intends that part five of this act shall be deemed separate from the other parts thereof, so that if said part five should fail or be adjudged invalid or unconstitutional it shall in no way affect any other part of this act.

SEC. 7. To carry out the provisions of this act there is hereby appropriated for the expenses of the industrial accident board for the fiscal year ending June thirty, nineteen hundred fourteen, and annually thereafter, the sum of forty thousand dollars. The auditor general shall add to and incorporate into the state tax the sum of forty thousand dollars annually, which said sum shall be included in the state taxes apportioned by the auditor general on all taxable property of the state, to be levied, assessed and collected as other state taxes, and when so assessed and collected to be paid into the general fund to reimburse said fund for the appropriation made by this act. (*As am'd L. 1913, approved May 8, 1913.*)

SEC. 8. The provisions of this act shall take effect and be in force from and after September first, nineteen hundred twelve.

Approved March 20, 1912. Effective as amended, August 13, 1913.

ACT AUTHORIZING FORMATION OF MUTUAL LIABILITY INSURANCE  
COMPANIES

An act to authorize the formation of mutual insurance companies whose members may be composed of persons, firms, partnership associations or corporations who have elected to come under the law relating to employers' liability and workmen's compensation. The People of the State of Michigan enact:

SECTION 1. Any number of persons, firms, partnership associations or corporations, not less than five, who have become subject to the provisions of the laws of Michigan relating to employers' liability and workmen's compensation, and who own or operate mills, factories, manufacturing establishments of any and every kind, buildings, stores, hotels and mercantile establishments, or any combination of manufacturing and mercantile business, mines, quarries, blast furnaces, railroads and transportation companies, telegraph and telephone companies, or who are engaged in the production or supplying of gas and electricity for lighting, fuel,

## Michigan

power, or other purposes; printing, publishing and bookmaking, or in carrying on any other lawful business in the State of Michigan, may, subject to the approval of the industrial accident board of Michigan, associate together and form an incorporated company for the purpose of mutual insurance of its members against liability for any and all payments which may become due and payable to their employés under the provisions of law for death benefits, disability benefits, or otherwise, as hereinbefore set forth: Provided, however, That the persons, firms or corporations so associating themselves together for the organization of such company shall have on their pay rolls at that time not less than five thousand employés: And Provided further, That the industrial accident board of Michigan may in its discretion limit the employers forming or joining in the organization of any such company to those engaged in industrial operations of the same general character, or in operations in which the risks and hazards incurred by their employés are more or less similar in nature and extent.

SEC. 2. Such employers so associating shall prepare in triplicate articles of association as hereinafter specified, which shall first be submitted to the industrial accident board and the commissioner of insurance for their approval, and when approved, one copy thereof shall be filed in the office of the commissioner of insurance, one copy in the office of the secretary of state and the other copy with the county clerk in the county where the principal office of such company will be maintained. Such articles of association shall be signed by all the incorporators, and shall be acknowledged by them, or by their duly authorized officers or agents, before some officer of the State duly authorized to take acknowledgment of deeds.

SEC. 3. Such articles of association shall set forth:

First. The names of the persons, firms, partnership associations and corporations associating in the first instance, their respective residences, the nature of the business in which they are engaged, and the number of persons employed therein by each of them;

Second. That each and all of such incorporators have elected, with the approval of the industrial accident board, to become subject to the provisions of this act, and are forming this corporation for the purpose of mutually insuring their numbers against liability for any and all payments which may become due and payable to their employés under the provisions of this act;

## Michigan

Third. The name by which such corporation shall be known;

Fourth. The period for which the company is incorporated, which shall not exceed thirty years;

Fifth. The number of directors, which shall be not less than five, nor more than fifteen, and the names of the directors for the first year;

Sixth. The place where the office of the company shall be located, which shall be within the State of Michigan.

SEC. 4. Any company formed under this act shall be deemed a body corporate and politic in fact and in name, and shall be subject to all the provisions of the statutes in relation to corporations, so far as they are applicable.

SEC. 5. The incorporators of any company organized under this act shall have power to make such by-laws not inconsistent with the constitution or laws of this State, as may be deemed necessary for the government of its officers and members, and the conduct of its affairs, the admission of new members and regulations governing the assessment and collection of premiums and assessments; but such by-laws shall not become operative until a true copy thereof shall have been filed with and approved by the industrial accident board.

SEC. 6. Upon the approval of the articles of association of such company by the industrial accident board and the commissioner of insurance, and upon filing the same with the commissioner of insurance, with the secretary of state and with the county clerk of the county where the principal office of said company will be kept, the commissioner of insurance shall grant a license to such company to issue policies.

SEC. 7. The board of directors shall determine the amount of the premiums of assessments which the members of such company shall pay for such insurance, in accordance with the nature of the business in which they are engaged, and the probable risk of injury to their employes under existing conditions. The board may also prescribe when and in what manner such premiums shall be paid, and may change the amount thereof both in respect to any or all of its members from time to time, as circumstances may require and the conditions of their respective plants, establishments or places of work in respect to the safety of their employes may justify, but all such premiums or assessments shall be levied on a basis that

## Michigan

shall be fair, equitable and just as among such members; and it shall be the duty of such board of directors at the beginning of each fiscal year, to call for the required payment of premiums in such amount as shall, in the judgment of said industrial accident board, be sufficient to enable such company to pay all sums which may become due and payable during the following year, to the employes or any of its members under the provisions of this act, and also the expenses of conducting its business.

SEC. 8. The company shall in its by-laws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds. Such contingent liability of a member shall not be less than an amount equal to the liability imposed by this act and of the act to provide compensation for the accidental injury or death of employes.

SEC. 9. If the company is not possessed of cash funds so that it has unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor in proportion to their several liability. Every member shall pay his proportional part of any assessment which may be laid by the board of directors, in accordance with the law and his contract, on account of injuries sustained and expenses incurred while he is a member of such company.

SEC. 10. The board of directors may, from time to time, by vote, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred. All premiums, assessments and dividends shall be fixed and determined in accordance with the experience of said company, but all the funds of the company, and the contingent liability of all the members thereof, shall be available for the payment of any claim against the company.

SEC. 11. Any proposed premium or assessment required of, or any dividend or distribution made to the members, shall be filed with the industrial accident board, and shall not take effect until approved by said board after such investigation as it may deem necessary.

SEC. 12. The board of directors may make and enforce reasonable rules and regulations, not in conflict with the laws of this

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Michigan

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State, for the prevention of injuries on the premises of members, and for this purpose the inspectors of the company shall have free access to all such premises during regular working hours. Any member neglecting to provide suitable safety appliances as provided by law or as required by the board of directors may be expelled by a majority vote of all the members. Any member, or employé of any member, aggrieved by any such rule or regulation, may petition the industrial accident board for review, and it may affirm, amend or annul the rule or regulation.

SEC. 13. Any member of said company, who has complied with all its rules, regulations and demands, may withdraw therefrom at the expiration of the period of one year for which he has elected to become subject to the provisions of this act: Provided, however, That he shall give written notice of such withdrawal to said company at least thirty days before the expiration of such period: And Provided further, That if at the time of such withdrawal liability may exist against such member and against said company for compensation to employés who have been theretofore killed or injured as hereinbefore provided, such member shall either relieve himself and said company from such liability in the manner provided in part four, section four of this act, or shall otherwise protect and indemnify said company against such liability in such reasonable manner as may be required by the board of directors.

SEC. 14. The business year of every company organized, existing or doing business in this State, under and by virtue of the provisions of this act, shall close on the thirty-first day of December in each year, and every such company shall within sixty days thereafter prepare, under oath of its president and secretary, and file in the office of the commissioner of insurance of this State, and also with said industrial accident board, a detailed statement showing its assets and how invested, liabilities, receipts from premiums and all other sources, an itemized account of all expenditures, salaries of officers, number of policies or certificates in force, amount insured thereby, claims paid, and amount paid on each claim, claims reported but not paid, claims contested and why, and shall answer such other questions as the commissioner of insurance, who shall furnish blanks for that purpose, may require, in order to ascertain its true financial condition. The commissioner shall publish such annual statements in detail in his annual report.



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Michigan

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SEC. 15. If any officer of the company shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury.

SEC. 16. Any such company formed under this act shall have power to amend its articles of association and by-laws at its regular annual meeting or at special meetings called and held as provided in its by-laws, but said amendments shall, before they become operative, be approved and filed in the same manner as the original articles and by-laws.

SEC. 17. Any such company formed under this act shall have power to own, hold and acquire such real and personal property as shall be necessary for the transaction of its business.

SEC. 18. Any company formed under this act may sue and be sued in any court of law or equity, with the same rights and obligations as a natural person, and in addition to the powers hereinbefore enumerated, shall possess and exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted herein.

Approved March 20, 1912.

## MINNESOTA

(L. 1913, c. 467)

AN ACT prescribing the liability of an employer to make compensation by way of damages for injuries due to accident received by an employé arising out of and in the course of employment, modifying common law and statutory remedies, in such cases; establishing an alternative elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder in certain cases.

*Be it enacted by the Legislature of the State of Minnesota:*

### PART 1

SECTION 1. *Compensation by action at law—Modification of remedies.*—When personal injury or death is caused to an employé by accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or, in case of death, his personal representative, for the exclusive benefit of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from his employer, provided the employé was himself not wilfully negligent at the time of receiving such injury; and the question of whether the employé was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law.

SEC. 2. *When it shall not be a defense.*—In all cases brought under Part 1 of this act it shall not be a defense (a) that the employé was negligent, unless and except it shall also appear that such negligence was wilful; (b) that the injury was caused by the negligence of a fellow employé; (c) that the employé had assumed the risks inherent in, or incidental to the work, or arising out of and in the course of his employment from the failure of the employer to provide and maintain safe premises and suitable appli-

## Minnesota

ances, which grounds of defense are hereby abolished except as provided in Section 4.

SEC. 3. *When employer loses rights.*—If the employer elects not to come under Part 2 of this act, he loses the right to interpose the three defenses named in Section 2 in any action brought against him for personal injury or death of an employé.

SEC. 4. *When employer may set up defense.*—If the employer becomes subject to Part 2 of this act and the employé does not, then the employer may set up such defenses as are available at the time of the passage of this act.

SEC. 5. *Provisions to apply to claim for death.*—The provisions of Sections one, two, three and four shall apply to any claim for the death of an employé arising under Section 4503 of Chapter 84, Revised Laws of Minnesota 1905, and the acts or parts of acts amendatory thereof, concerning death by wrongful act.

SEC. 6. *Burden of proof upon defendant.*—In all actions at law brought pursuant to Part 1 of this act, the burden of proof to establish wilful negligence of the injured employé shall be upon the defendant.

SEC. 7. *Claim for legal services not an enforceable lien.*—No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by a judge of the district court. Provided, that if notice in writing be given the defendant, of such claim for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided. All sums allowed as liens against such compensation or paid for legal, medical and hospital services and other disbursements, shall be reported by the employé to the labor commissioner with terms of settlement as provided in Section 24 of this act.

## PART 2

## ELECTIVE COMPENSATION

SEC. 8. *Not to apply to common carrier.*—This act shall not be construed or held to apply to any employer acting as a common carrier when engaged in interstate or foreign commerce by railroad, which employer by reason of being engaged in interstate or foreign commerce by railroad, is not subject exclusively to the legislative power of the State of Minnesota, or for which employer and the employes thereof, a rule of liability or method of compensation has been, or may be established by the congress of the United States; nor shall it apply to any employé of such common carrier injured or killed while so engaged. Nor shall the provisions of this act apply to actions or proceedings to recover damages or compensation for personal injuries sustained by domestic servants, farm laborers, or persons whose employment at the time of the injury is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

Whenever an employé of a common carrier, engaged in interstate or foreign commerce by railroad shall sustain personal injury by accident, arising out of, and in the course of his employment, resulting in his disability or death, it shall be presumed prima facie that such employé was, at the time of the accident, engaged in such commerce.

SEC. 9. *When agreement is made between employer and employé.*—If both employer and employé, shall, by agreement express or implied, or otherwise, as herein provided, become subject to Part 2 of this act, compensation according to the schedules hereinafter contained shall be paid by every such employer, in every case of personal injury or death of his employé, caused by accident, arising out of and in the course of employment, without regard to the question of negligence, except accidents which are intentionally self inflicted or when the intoxication of such employé is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer.

SEC. 10. *To be surrender of rights.*—Such agreement or the election hereinafter provided for shall be a surrender by the parties

## Minnesota

thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in Part 2 of this act, and an acceptance of all the provisions of Part 2 of this act, and shall bind the employé himself, and for compensation for his death shall bind his personal representative, the surviving spouse and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency, for compensation for death or injury, as provided for by Part 2 of this act.

SEC. 11. *Contracts presumed to have been made in writing.*—All contracts of employment made after the taking effect of this act shall be presumed to have been made with reference, and subject to the provisions of Part 2, unless otherwise expressly stated in the contract, in writing, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of Part 2. Every employer and every employé is presumed to have accepted and come under Part 2 hereof, unless thirty (30) days prior to accident, he shall have signified his election not to accept or be bound by the provisions of Part 2. This election not to accept Part 2 shall be by notice as follows:

The employer shall post and keep posted in his shop or place of business a written or printed notice of his election not to be bound by Part 2 hereof and file a duplicate thereof with the labor commissioner.

The employé shall give written or printed notice to the employer of his election not to be bound by Part 2, and file a duplicate with proof of service attached thereto with the labor commissioner.

SEC. 12. *Either party may terminate agreement.*—Either party may terminate his acceptance, or his election not to accept of the provisions of Part 2 by thirty (30) days' written notice to the other. A duplicate of such notice with proof of service attached thereto shall be filed with the labor commissioner and the time shall not begin to run until the notice is so filed.

Provided, however, that during the thirty (30) days immediately succeeding the taking effect of this act, notice of election not to accept the provisions of Part 2 may be given by either party to the other as above provided, and shall be immediately effective as a notice of election, upon filing duplicate thereof with the labor commissioner.

## SCHEDULE OF COMPENSATION

SEC. 13. *Schedule of compensation allowed under act.*—Following is the schedule of compensation: (a) For injury producing temporary total disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars (\$10.00) per week and a minimum of six dollars (\$6.00) per week; provided, that if at the time of injury the employé receives wages of less than six dollars (\$6.00) per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks. Payments to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be fifty per cent of the difference between the wage of the workman at the time of the injury, and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not however beyond three hundred weeks, payment to be made at the intervals when the wage was payable as nearly as may be and subject to the same maximum and minimum as stated in (a).

(c) For permanent partial disability, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to-wit:

For the loss of a thumb, fifty per centum of daily wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, fifty per centum of daily wages during thirty-five (35) weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty (30) weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts specified above for such thumb or finger.

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Minnesota

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The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; providing, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty (30) weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten (10) weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of daily wages during one hundred and fifty (150) weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred (200) weeks.

For the loss of a foot, fifty per centum of daily wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, fifty per centum of daily wages during one hundred and seventy-five (175) weeks.

For the loss of an eye, fifty per centum of daily wages during one hundred (100) weeks.

In all other cases of permanent partial disability, not above enumerated, the compensation shall be fifty per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition. Compensation shall continue during disability, not however, beyond three hundred (300) weeks.

In all cases of permanent partial disability within the foregoing schedule, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided, shall be in lieu of all other compensation in such cases.

Should the employer and employé be unable to agree upon the amount of compensation to be paid, the amount of compensation shall be determined according to the provisions of Section 30 hereof.

## Minnesota

The compensations provided in clause (c) are all subject to the same limitations as to maximum and minimum as are stated in clause (a).

(d) For permanent total disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars (\$10.00) per week and a minimum of six dollars (\$6.00) per week; provided, that if at the time of injury the employé receives wages of less than six dollars (\$6.00) per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred (400) weeks; payment to be made at the intervals when the wage was payable, as nearly as may be.

(e) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, or a total loss of mental faculties, or complete paralysis of both legs or both arms, shall constitute permanent total disability.

(f) In case death occurs to a workman during the period of disability, caused by an injury due to accident, and arising out of and in the course of his employment, all payments previously made as compensation for such injury, shall be deducted from the compensation, if any, due on account of death.

## DEPENDENTS

SEC. 14. *Who are dependents and allowances to each.*—(1) Wife and children presumed wholly dependent. For the purposes of this act, the following described persons, viz.: Wife, minor children under the age of eighteen years, or those over that age who are physically or mentally incapacitated from earning, shall be presumed to be wholly dependent.

(2) Actual dependents.—Any dependents named in subdivision 1; also husband, mother, father, grandmother, grandfather, sisters and brothers who were wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his actual dependents, and payment of compensation shall be made to them in the order named.

(3) Partial dependents.—Any dependents named in subdivision 2, who regularly derived part of their support from the wages



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Minnesota

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of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his partial dependents, and payment of compensation shall be made to them in the order named.

DISTRIBUTION OF COMPENSATION TO DEPENDENTS

(4) In death cases, compensation payable to dependents shall be distributed according to the laws of Minnesota, providing for distribution of the personal property of an intestate decedent, except as herein otherwise provided, and shall be computed and paid on the following basis:

(5) If the deceased employé leave a widow and no dependent child, there shall be paid to the widow, thirty-five per centum of the monthly wages of deceased.

(6) If the deceased employé leave a widow and one dependent child, there shall be paid to the widow for the benefit of herself and such child, forty per centum of the monthly wages of deceased.

(7) If the deceased employé leave a widow and either two or three dependent children, there shall be paid to the widow for the benefit of herself and such children, fifty per centum of the monthly wages of deceased.

(8) If the deceased employé leave a widow and four or more dependent children, there shall be paid to the widow for the benefit of herself and such children, sixty per centum of the monthly wages of the deceased.

(9) In case of re-marriage of a widow without children, she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid. In case of re-marriage of a widow who has dependent children, the unpaid balance of compensation which would otherwise become due to her, shall be paid to such children.

(10) If the deceased employé leave a dependent orphan, there shall be paid forty per centum of the monthly wages of deceased, with ten per centum additional for each orphan in excess of two, with a maximum of sixty per centum of such wages.

(11) If the deceased employé leave a dependent husband and no dependent child, there shall be paid to the husband twenty-five per centum of the monthly wages of deceased.

(12) If the deceased employé leave no widow or children or

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Minnesota

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husband entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one parent, twenty-five per centum of the monthly wages of the deceased, and if both parents, thirty-five per centum of the monthly wages of the deceased to such parent or parents.

(13) If the deceased leave no widow or dependent child or husband or parent entitled to any payment hereunder, but leaves a brother, sister or grandparent wholly dependent on him for support, there shall be paid to such dependent relative, if but one, twenty-five per centum of the monthly wages of the deceased, or if more than one thirty per centum of the monthly wages of the deceased, divided between or among them share and share alike.

(14) If compensation is being paid under Part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(15) Partial dependents.—Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total wage of the deceased, during the same time.

(16) No dependents.—Expense of last sickness and burial not exceeding one hundred dollars (\$100.00), in addition to the medical and hospital services and expenses provided by Section 18.

(17) Death compensation.—The compensation in case of death shall be subject to a maximum compensation of ten dollars (\$10.00) per week and a minimum of six dollars (\$6.00) per week; provided, that if at the time of injury the employé receives wages of less than six dollars (\$6.00) per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency not exceeding three hundred (300) weeks. Payments to be made at the intervals when the wage was payable, as nearly as may be.

(18) In computing and paying compensation to orphans or other children, in all cases, only those under eighteen years of age, or those over eighteen years of age who are physically or mentally incapacitated from earning, shall be included; the former

## Minnesota

to receive compensation only during the time they are under eighteen, the latter only for the time they are so incapacitated, within the period of three hundred (300) weeks.

SEC. 15. *Injury increasing disability.*—If an employé receive an injury, which, of itself, would only cause permanent partial disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

SEC. 16. *Liability of joint employers.*—In case any employé for whose injury or death compensation is payable under Part 2 of this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several wage liability to such employé. If one or more but not all of such employers should be subject to Part 2 of this act, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject, shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employé: Provided, however, that nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation.

SEC. 17. *Waiting period.*—No compensation shall be allowed for the first two weeks after injury received, except as provided by Section 18, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in Section 19.

SEC. 18. *Medical, surgical and hospital service.*—Such medical and surgical treatment, medicine, medical and surgical supplies, crutches and apparatus as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety (90) days, to cure and relieve from the effects of the injury, the same to be provided by the employer and in case of his inability or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same; provided, however, that the total liability under this section shall not exceed the sum of one hundred dollars

## Minnesota

(\$100.00) in value; except that the court may, during said period of ninety (90) days, upon necessity being shown therefor, require the employer to furnish such additional medical, surgical and hospital treatment and supplies as may be reasonable, which, together with any such sums or relief theretofore furnished shall not exceed in all two hundred dollars (\$200.00) in value.

SEC. 19. *Notice to employer of accident.*—Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the injured workman, or a dependent, or some one in behalf of either, shall give notice thereof to the employer in writing, within fourteen (14) days after the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty (30) days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety (90) days, and if the employé, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of the employer or his agent, then compensation may be allowed, unless the employer shall show that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum as shall fairly represent the prejudice shown. Unless knowledge obtained or notice given, within ninety (90) days after the occurrence of the injury, no compensation shall be allowed.

SEC. 20. *Notice to be given.*—The notice referred to in Section 19 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof within the state, and shall be substantially in the following form:

## NOTICE

“ You are hereby notified that an injury was received by (Name)  
 ..... Who was in your employ at  
 (Place).....while engaged as (kind of

## Minnesota

work).....on or about the.....day of  
 ..... 19.., and who is now located at (give town, street and  
 number).....that so far as now known, the  
 nature of the injury was.....and that compensation  
 may be claimed therefor.

(Signed).....

(Giving address).

Dated.....19...."

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employé, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified.

SEC. 21. *Examination and verification of injury.* (1) The injured employé must submit himself to examination by employer's physician, if requested by the employer, and at reasonable times thereafter upon employer's request. The employé shall be entitled upon request to have his own physician present at any such examination. Each party shall defray the cost of his own physician.

(2) Medical examination by neutral physician.—In case of dispute as to the injury, the court may, of its own motion, or upon request of any interested party, appoint a neutral physician of good standing and ability to make an examination of the injured person, and report his findings to the court. The expense of such examination shall be borne by the said parties

(3) If the injured employé refuses to comply with any reasonable request for examination, his right to compensation shall be suspended and no compensation shall be paid, while he continues in such refusal.

(4) Autopsy.—In all death claims where the cause of death is obscure or disputed, any interested party may require an autopsy; the cost of such autopsy shall be borne by the party demanding the same.

SEC. 22. *Settlement and payment of compensation.*—(1) The interested parties shall have the right to settle all matters of compensation between themselves. But all settlements shall be substantially in accordance with the provisions of Sections 13 and

## Minnesota

14 of this act, and shall be approved by a judge of the district court. When so approved such settlements shall be filed with the clerk of the district court and in case of default by the employer in the payment of any compensation determined or agreed upon and the continuation of such default for the period of thirty (30) days after payment is due and payable, the employé may upon five (5) days' notice in writing to the employer of his intention to apply to the court for judgment, cause judgment to be entered on such settlement or determination for all compensation due and payable and unpaid; and such judgment shall have the same force and effect, and may be satisfied as other judgments of the same court.

(2) In case of a dispute over, or failure to agree upon a claim for compensation between employer and employé, or the dependents of the employé, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the district court of the county which would have jurisdiction in a civil case, or, where there is more than one judge of said court, then to either or any of said judges of such court; which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding, subject to the right of appeal as hereinafter provided.

SEC. 23. *In case of an alien.*—In case a deceased employé entitled to compensation is an alien, who leaves surviving him a wife or other dependent residing outside of the United States, the said judge shall by order, in case no other personal representative of the deceased shall have been appointed by the probate court, direct payment to be made to the duly accredited consular officer of the foreign country of which the deceased was a citizen, if such consular officer resides in the state of Minnesota, upon like terms as to bond for the proper application of the compensation coming to the deceased, as are required of administrators. But in either case such representatives shall, when so appointed and at reasonable times thereafter, upon request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the names, age, residence and relationship of each dependent to the deceased.

SEC. 24. *Record of settlements.*—Copies of all settlements and releases shall be filed by the employer with the labor commissioner within ten (10) days after such settlements are made, and shall become part of the permanent records of that department.

SEC. 24A. The labor commissioner upon demand of an employé in this state, shall advise such employé of his rights under this act and shall assist, so far as possible, in adjusting differences between employé and employer under Part 2 thereof. He shall observe in detail the operation of the act throughout the state and shall make report thereof to each session of the legislature, together with such suggestions and recommendations as to changes as he may deem necessary or advisable for the improvement thereof.

SEC. 25. *Payment in lump sum.*—The amounts of compensation payable periodically hereunder, either by agreement of the parties, so approved by the court, or by decision of the court, may be commuted to one or more lump sum payments, except compensation due for death or permanent total disability, or for permanent partial disability resulting from the loss of an arm or of a hand or a foot or a leg or an eye. These may be so commuted only with the consent of the district court.

SEC. 26. *Settlements to be final—Exceptions.*—All settlements of compensation by agreement of the parties, and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award, does not exceed the compensation for six months disability, shall be final and not subject to readjustment.

SEC. 27. *When compensation payable periodically may be modified.*—All amounts paid by employer and received by the employé or his dependents, by lump sum payment, shall be final; but the amount of any award payable periodically for more than six (6) months may be modified as follows:

(a) At any time by agreement of the parties and approved by the court.

(b) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the court by either party on the ground of increase or decrease of incapacity due solely to the injury. In such case the same procedure shall be followed as in Section 30 in case of disputed claim for compensation.

## Minnesota

SEC. 28. *Employer may pay award to trustee and be discharged.*—At any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of all future installments of compensation calculated on a six per cent basis, may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the court, and such sum, together with all interest thereon, shall, thereafter be held in trust for the employé or the dependents of the employé, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipts in duplicate of the trustee one of which shall be filed with the labor commissioner, and the other filed with the clerk of the district court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employé or the dependents of the deceased employé, as the case may be.

SEC. 29. *Preference as to compensation.*—The right to compensation and all compensation awarded any injured employé or for death claims to his dependents, shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien on the property of third persons by reasons of such preference.

Claims for compensation owned by an injured employé or his dependents, shall not be assignable and shall be exempt from seizure or sale for the payment of any debt or liability.

SEC. 30. *Procedure in case of dispute.*—Procedure in case of dispute shall be as follows: Either party may present a verified complaint to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the



said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the presentation of such complaint, it shall be filed with the clerk of the district court of the proper county, and the judge shall fix by order a time and place for the hearing thereof, not less than three (3) weeks after the date of the filing of said complaint. A copy of said complaint and order shall be served as summons in a civil action upon the adverse party within four (4) days after filing the complaint. Within seven (7) days after the service of such complaint the adverse party shall file an answer to said complaint, which shall admit or deny the substantial averments of the complaint, and shall state the contention of the defendant with reference to the matter in dispute as disclosed by the complaint. The answer shall be verified in like manner as required for a complaint.

At the time fixed for hearing, or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the said court, and judgment shall be entered thereon in the same manner as in causes tried in the said district court, and shall contain a statement of facts as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the supreme court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services and proceedings in civil cases.

SEC. 31. *Rights of action preserved.*—Every right of action for death, by wrongful act or for injury by negligence, accruing to an injured employé prior to the taking effect of this act is continued and preserved under the existing law.

SEC. 31A. Any employer who is responsible for compensation as provided in this act may insure the risk in any manner then authorized by law. But those writing such insurance shall in every case be subject to the conditions in this section hereinafter named.

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Minnesota

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If the risk of the employer is carried by any insurer doing business for profit, or by any insurance association or corporation formed of employers, or of employers and workmen, to insure the risks under this act, operating by the mutual assessment or other plan or otherwise, then in so far as policies are issued on such risks they shall provide for compensation for injuries or death according to the full benefits of Part 2 of this act.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for arbitration or other purposes shall be jurisdiction of the insurer, and that the insurer will in all things be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provisions relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the State of Minnesota, and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law the additional requirements, terms and conditions in this section provided.

It shall be lawful for the employer and the workman to agree to carry the risks covered by Part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involved a

## Minnesota

contribution by the workman shall not prevent its validity if the employer pays not less than the cost of the insurance of the risks otherwise covered by Part 2 of this act, and the workman gets the whole of the additional compensation or benefits.

If the employer shall insure to his employ  s the payment of the compensations provided by Part 2 of this act, in a corporation or association authorized to do business in the state of Minnesota and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the labor commissioner of the state of Minnesota, then, and in such case, any suits or actions brought by an injured employ   or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employ   against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction, proceedings may be brought by the employ   against the employer in the first instance or against such employer and insurance company jointly or severally or in any pending proceeding against any insurance company, the employer may be joined at any time after such adjudication.

SEC. 32. (1) *Third persons' rights and liabilities.*—Any person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act, shall himself be included in the term "employer," and be subject to all the liabilities of employers under this act. But this section shall not be considered to cover or mean an owner who lets a contract to a contractor in good faith, nor a contractor who, in good faith, lets to a sub-contractor a portion of his contract. Pro-

## Minnesota

vided, however, that no person shall be deemed a contractor or sub-contractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employer's premises and with the employer's tools or appliances and under the employer's direction; nor one who does what is commonly known as "piece work," or in any way where the system of employment used merely provides a method of fixing the workman's wages.

(2) Where compensation is claimed from, or proceedings taken against a person under subdivision one of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in Section 33, or under the conditions set forth in Section 34 (i).

SEC. 33. (1) *Liability of party other than employer—Procedure—Third party under Part 2.*—That where an injury or death for which compensation is payable under Part 2 of this act is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of Part 2 of this act, the employé in case of injury or his dependents in case of death, may, at his or their option, proceed either at law against such party to recover damages, or against the employer for compensation under Part 2 of this act, but not against both.

If the employé in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which and the persons to whom the same are payable, shall be as provided for in Part 2 of this act and not otherwise; provided that in no case shall such party be liable to any person other than the employé or his dependents for any damages growing out of or resulting from such injury or death.

If the employé or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employé or his dependents to recover against

such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to such employé, or his dependents hereunder, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

(2) *Third party not under Part 2.*—That where the injury or death for which compensation is payable under Part 2 of this act was caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party not being subject to the provisions of Part 2 of this act, legal proceedings may be taken by the employé or dependents against such other party to recover damages, notwithstanding the payment by the employer, or his liability to pay compensation hereunder. But in such case, if the action against such other party is brought by the injured employé or in case of his death by his dependents, and judgment is obtained and paid, or settlement is made with such other party, either with or without suit the employer shall be entitled to deduct from the compensation payable by him, the amount actually received by such employé or dependents; provided that if the injured employé or in case of his death his dependents shall agree to receive compensation from the employer or shall institute proceedings to recover the same, or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employé or dependents and may maintain, or in case an action has already been instituted, may continue the action either in the name of the employé or dependents, or in his own name against such other party for the recovery of damages, but such employer shall nevertheless pay over to the injured employé or dependents all sums collected from such other party by judgment or otherwise in excess of the amount of such compensation payable by the employer under Part 2 of this act, and costs, attorney's fees, and reasonable expenses incurred by such employer in making such collection or enforcing such liability; provided that in no case shall such party be liable to any person other than the employé or his dependents for any damages growing out of or resulting from such injury or death.

SEC. 34. *Words and phrases defined.*—Throughout this act the following words and phrases as used therein shall be considered

## Minnesota

to have the following meaning respectively, unless the context shall clearly indicate a different meaning in the connection used.

(a) The word "compensation" has been used both in Part 1 and Part 2 of this act to indicate the money benefit to be paid on account of injury or death. Strictly speaking, the benefit which an employé may receive by action at law under Part 1 of this act is damages, and this is indicated in Section 1. To avoid confusion, the word "compensation" has been used in both parts of the act, but it should be understood that under Part 1 the compensation by way of damages is determined by an action at law.

(b) "Child" or "children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased.

(c) A dependent child or orphan shall be considered to mean an unmarried child under the age of eighteen years or one over that age, who is physically or mentally incapacitated from earning.

(d) The term "employer" as used herein shall mean every person not excluded by Section 8, who employs another to perform a service for hire, and to whom the "employer" directly pays wages, and shall include any person or corporation, co-partnership, or association or group thereof, and shall include county, village, town, city, school district and other public employers, except the state.

(e) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time.

(f) The term "workman" shall include the plural and all ages and both sexes.

(g) The terms "employé" and "workman" are used interchangeably and have the same meaning throughout this act, and shall be construed to mean:

(1) Every person in the service of a county, city, town, village or school district therein, under any appointment or contract of hire, express or implied, oral or written; but shall not include any official of any county, city, town, village or school district therein, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term.

(2) Every person, not excluded by Section 8, in the service of

another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the state, who for the purpose of making election of remedy under this act shall be construed the same, and have the same power of contracting and electing as adult employés.

(h) The word "accident" as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault and producing at the time, injury to the physical structure of the body.

(i) Personal injuries, etc.—Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of employment," it is hereby declared:

Not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where their service requires their presence as a part of such service at the time of the injury, and during the hours of service as such workmen, and shall not include an injury caused by the act of a third person or fellow employé intended to injure the employé because of reasons personal to him, and not directed against him as an employé, or because of his employment.

(j) Wherever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

(k) Amputations.—Amputations between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

(l) The labor commissioner, referred to in this act, shall denote the Commissioner of Labor of the State of Minnesota.

(m) "The court" as used herein shall mean the district court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and "the judge" shall mean a judge of said court.

(n) As to constitutionality.—In case for any reason any para-

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Minnesota

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graph or any provision of this act shall be questioned in any court of last resort and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that Parts 1 and 2 are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fall, the other part shall fall with it and not stand alone. Part 1 of this act shall not apply in cases where Part 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension or modification of the common law.

SEC. 35. *Repealing inconsistent acts.*—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 36. *Time act shall take effect.*—This act shall take effect from and after the 1st day of October, A. D. 1913.

Approved April 24, 1913.

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## UNITED STATES OF AMERICA

### STATE OF MINNESOTA

#### DEPARTMENT OF STATE

I, JULIUS A. SCHMAHL, Secretary of State of the State of Minnesota, do hereby certify that I have compared the annexed copy with record of the original instrument in my office of Chapter 467 of the General Laws of Minnesota for 1913, and that said copy is a true and correct transcript of said instrument and of the whole thereof.

[SEAL] In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in Saint Paul, this 2d day of May A. D. nineteen hundred and thirteen.

JULIUS A. SCHMAHL,  
*Secretary of State.*



## NEBRASKA

(L. 1913, c. 000)

(SENATE FILE NO. 1)

AN ACT prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment. Modifying common law and statutory remedies, in such cases. Establishing an elective schedule of compensation. Regulating procedure for the determination of liability and providing methods for payments of compensation thereunder. Repealing all acts and parts of acts in conflict herewith.

*Be it enacted by the People of the State of Nebraska:*

### PART I

#### COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

SECTION 1. When personal injury is caused to an employé by accident arising out of and in the course of his employment, of which the actual or lawful imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employé was himself not wilfully negligent at the time of receiving such injury, and the question of whether the employé was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law.

SEC. 2. In all cases brought under Part I of this act it shall not be a defense (a) that the employé was negligent, unless and except it shall also appear that such negligence was wilful, or that the employé was in a state of intoxication; (b) that the injury was caused by the negligence of a fellow employé; (c) that the employé had assumed the risks inherent in, or incidental to, or arising from the failure of the employer to provide and main-

## Nebraska

tain safe premises and suitable appliances, which grounds of defense are hereby abolished, except as provided in Section 4.

SEC. 3. If an employer subject to the provisions of this act as shown in Sec. 6 elects not to come under Part II hereof, he loses the right to interpose the three defenses above stated in any action brought against him for personal injury or death of an employé.

SEC. 4. If an employer becomes subject to Part II of this act, and the employé does not, then the defenses existing under the laws for Nebraska, other than the provisions of this act, at the time of the personal injury or death of the employé shall be available to the employer in any action brought by the employé or his dependents for personal injury, or death.

SEC. 5. The provisions of Sections 1, 2, 3 and 4 shall apply to any claim for the death of any employé arising under Chapter 21 of the Compiled Statutes of Nebraska, 1911, and the acts or parts of acts amendatory thereof, concerning death by wrongful act.

SEC. 6. (1) The provisions of this act shall apply to the State of Nebraska and every governmental agency created by it, and every employer in this state employing five or more employés, in the regular trade, business, profession or vocation of such employer.

(2) The following are declared not to be hazardous occupations and not within the provisions of this act; employers of household domestic servants, employers of farm laborers and all employers employing less than five employés, in the regular trade, business, profession or vocation of such employer. Railroad companies engaged in interstate or foreign commerce are declared subject to the powers of Congress and not within the provisions of this act.

(3) Any employer not included in the preceding paragraphs of this section and the employés of such employer may, by their joint election, filed with the Insurance Commissioner, accept the provisions of Part II of this act, and such acceptances shall subject them to the said provisions of Part II hereof to all intents and purposes as if they had been originally included in the terms of Subdivision 2 of this section; Provided, however, that either such employer or workmen (prior to accident) shall have the right to waive such election to come under Part II hereof, the procedure

being the same as indicated in Subdivisions (a) and (b) of Section 12.

SEC. 7. In all actions at law brought pursuant to Part I of this act, the burden of proof to establish wilful negligence of the injured employé shall be on the defendant.

SEC. 8. No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by the judge of the District Court of the district in which such issue arose. After such approval, if notice in writing be given the defendant of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation. Provided, however, that where the employé's compensation is payable by the employer in periodical installments, the court shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements.

## PART II

### ELECTIVE COMPENSATION

SEC. 9. If both employer and employé become subject to Part II of this act, both shall be bound by the schedule of compensation herein provided, which compensation shall be paid in every case of injury or death caused by accident arising out of and in the course of employment, except accidents caused by, or resulting in any degree from wilful negligence, as hereinafter defined, of the employé.

SEC. 10. When employer and employé shall by agreement, express or implied, or otherwise as hereinafter provided, accept the provisions of Part II of this act, compensation shall be made for personal injuries to or for the death of such employé by accident arising out of and in the course of his employment, without regard to the negligence of the employer, according to the schedule hereinafter provided, in all cases except when the injury or death is

## Nebraska

caused by wilful negligence on the part of the employé; and the burden of proof of such fact shall be upon the employer.

SEC. 11. Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in Part II of this act, and an acceptance of all the provisions of Part II of this act, and shall bind the employé himself, and for compensation for his death shall bind his legal representatives, his widow and next of kin, as well as the employer and the legal representatives of a deceased employer, and those conducting the business of the employer during bankruptcy or insolvency.

SEC. 12. (Method of election) In the occupations described in Section 6 hereof, and all contracts of employment made after the taking effect of this act shall be presumed to have been made with reference, and subject to the provisions of Part II hereof, unless otherwise expressly stated in the contract, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of Part II. Every such employer and every employé is presumed to accept and come under Part II hereof, unless prior to accident he shall signify his election not to accept or be bound by the provisions of Part II. This election not to accept Part II shall be by notice as follows:

(a) The employer shall post and thereafter keep continuously posted in a conspicuous place about the place or places where his workmen are employed a written or printed notice of his election not to be bound by Part II hereof, and shall file a duplicate thereof with the Insurance Commissioner.

(b) The employé shall give written or printed notice to the employer of his election not to be bound by Part II and shall file a duplicate with proof of service attached thereto with the Insurance Commissioner.

SEC. 13. (Waiving election) An employer who has given notice of his election not to accept or be bound by the provisions of Part II hereof, may waive such election at any time, by posting about the place or places where his workmen are employed a written or printed notice setting forth a withdrawal of his previous election not to be bound by the provisions of Part II. A duplicate

of such notice with proof of such posting attached thereto shall be filed with the Insurance Commissioner. An employé who has given written or printed notice to his employer that he elects not to be subject to the provisions of Part II hereof, may waive such election at any time prior to the happening of an accident resulting in personal injuries to said employé, by a notice in writing directed to the employer and served upon the employer or his agent. A duplicate of such notice with proof of service attached thereto shall be filed with the Insurance Commissioner. The waivers referred to in the preceding paragraphs of this section shall not become effective until noon of the fifth day after filing the required notice with the Insurance Commissioner.

SEC. 14. (Employer described) The following shall constitute employers subject to the provisions of this act:

- (1) The State and every governmental agency created by it;
- (2) Every person, firm or corporation, including any public service corporation, who is engaged in any trade, occupation, business, or profession as described in Section 6, and who has any person in service under any contract of hire, express or implied, oral or written, and who prior to the time of the accident to the employé for which compensation under this act may be claimed, shall not, in the manner provided in Section 12, have elected not to become subject to the provisions of Part II of this act.

SEC. 15. (Employé described) The terms "employé" and "workman" are used interchangeably and have the same meaning throughout this act; the said terms include the plural and all ages and both sexes, and shall be construed to mean:

- (1) Every person in the service of the State or of any governmental agency created by it, under any appointment or contract of hire, express or implied, oral or written, but shall not include any official of the State, or of any governmental agency created by it, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term.

- (2) Every person in the service of any employer who is engaged in any trade, occupation, business or profession as described in Section 6, under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the State, who for the purposes

## Nebraska

of making election of remedies under this Code shall have the same power of contracting and electing as adult employés.

(3) It shall not be construed to include any person whose employment is casual, or not for the purpose of gain or profit by the employer, or which is not in the usual course of the trade, business, profession or occupation of his employer. The term "casual" shall be construed to mean "Occasional; coming at certain times without regularity, in distinction from stated or regular."

(4) It shall not be construed to include any person to whom articles and materials are given to be made up, cleaned, washed, finished, repaired or adapted for sale in the worker's own home or on other premises not under the control or management of the employer, unless the employé is required to perform the work at a place designated by the employer.

## THIRD PERSONS' RIGHTS AND LIABILITIES

SEC. 16. Any person, firm or corporation creating or carrying into operation any scheme, artifice or device to enable him, them or it to execute work without being responsible to the workmen for the provisions of this act, shall be included in the term "employer" and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of this act. This section, however, shall not be so construed as to cover or mean an owner who lets a contract to a contractor in good faith, or a contractor who, in good faith, lets to a sub-contractor a portion of his contract, if the owner or principal contractor, as the case may be, requires the contractor or sub-contractor, respectively, to procure a policy or policies of insurance from an insurance company licensed to make such insurance in this state, which policy or policies of insurance shall guarantee payment of compensation according to this act to injured workmen.

SEC. 17. Where compensation is claimed from, or proceedings taken against a person, firm or corporation under the foregoing section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

SEC. 18. (Subrogation) Where a third person is liable to the

## Nebraska

employé or to the dependents, for the injury or death, the employer shall be subrogated to the right of the employé or to the dependents against such third person, and the recovery by such employer shall not be limited to the amount payable as compensation to such employé or dependents, but such employer may recover any amount which such employé or his dependents would have been entitled to recover. Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employé or to the dependents, and shall be treated as an advance payment by the employer, on account of any future installments of compensation.

## SCHEDULE OF COMPENSATION

SEC. 19. (When compensation begins) No compensation shall be allowed for the first fourteen days after disability begins, except as provided in Section 20, but if disability extends beyond the period of fourteen days, compensation shall begin on the fifteenth day after the injury; Provided, however, that if such disability continues for eight weeks or longer, such compensation shall be computed from the date of the injury.

SEC. 20. (Medical aid) During the first twenty-one days after disability begins the employer shall be liable for reasonable medical and hospital services and medicines as and when needed, not however to exceed two hundred dollars in value, unless the employé refuses to allow them to be furnished by the employer; Provided, however, that where the injured employé refuses or neglects to avail himself of such medical or surgical treatment, the employer shall not be liable for any aggravation of such injury due to said neglect or refusal.

SEC. 21. The following schedule of compensation is hereby established for injuries resulting in disability.

(1) For the first three hundred weeks of total disability the compensation shall be fifty per centum of the wages received at the time of injury, but such compensation shall not be more than ten dollars per week or less than five dollars per week; Provided, that, if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of

## Nebraska

such wages per week as compensation. After the first three hundred weeks of total disability, for the remainder of the life of the employé, he shall receive forty per centum of the wages received at the time of the injury, but the compensation shall not be more than eight dollars per week nor less than four dollars per week; Provided, that, if at the time of the injury the employé receives wages of less than four dollars per week then he shall receive the full amount of such wages as compensation. Nothing in this subdivision shall require the payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of three hundred weeks mentioned in this subdivision of this section shall be reduced by the number of weeks during which compensation was paid for such partial disability.

(2) For disability partial in character (except the particular cases mentioned in subdivision 3 of this section), the compensation shall be fifty per centum of the difference between the wages received at the time of injury and the earning power of the employé thereafter; but such compensation shall not be more than ten dollars per week. This compensation shall be paid during the period of such partial disability; not, however, beyond three hundred weeks after the date of the accident causing the disability. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability.

(3) For all disability resulting from permanent injury of the following classes, the compensation shall be exclusively as follows:

For the loss of a hand, fifty per centum of the wages during one hundred and seventy-five weeks;

For the loss of an arm, fifty per centum of wages during two hundred and fifteen weeks;

For the loss of a foot, fifty per centum of wages during one hundred and fifty weeks;

For the loss of a leg, fifty per centum of wages during two hundred and fifteen weeks;

For the loss of an eye, fifty per centum of wages during one hundred and twenty-five weeks;

For the loss of any two or more of such members, not con-



stituting total disability, fifty per centum of wages during the aggregate of the periods specified for each.

The loss of both hands or both arms, or both feet, or both legs, or both eyes shall constitute total disability, to be compensated according to the provisions of subdivision 1 of this section.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg or eye shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye. Compensation under this subdivision shall not be more than ten dollars per week nor less than five dollars per week; Provided, that, if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week as compensation.

SEC. 22. (Injuries resulting in death.)

(1) If death results from the injuries and the deceased employé leaves one or more dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, the compensation, subject to the provisions of section 23, shall be fifty per centum of the wages received at the time of injury, but the compensation shall not be more than ten dollars per week nor less than five dollars per week; Provided, that, if at the time of injury the employé receives wages of less than five dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency, not exceeding three hundred and fifty weeks from the date of the accident causing the injury.

(2) If the deceased employé leaves no dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, but leaves one or more dependents only partly dependent upon his earnings for support at said time, the compensation shall be the same proportion of the benefits provided in subdivision 1 of this section for persons wholly dependent as the average amount of the wage regularly contributed by the deceased to such partial dependents at, and for a reasonable time immedi-

## Nebraska

ately prior to the injury bears to the total wage of the deceased, during the same time.

(3) Upon the death of an employé, resulting through personal injuries as herein defined, whether or not there be dependents entitled to compensation, the reasonable expenses of the last sickness and burial, not exceeding one hundred dollars, without deduction of any amount theretofore paid for compensation or for medical expenses, shall be paid to his dependents, or if there be no dependent, then to the personal representatives of the deceased.

(4) Compensation under this Act to alien dependents, widows, children and parents not residents of the United States, shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employé, the employer may, at his option, commute all future installments of compensation to be paid to such alien dependents by paying to them two-thirds of the total amount of such future installments of compensation. Alien widowers, brothers and sisters not residents of the United States shall not be entitled to any compensation.

(5) The consul-general, consul, vice-consul-general, or vice-consul, of the nation of which the employé, whose injury results in death, is a citizen, or the representative of such consul-general, consul, vice-consul-general, or vice-consul, residing within the state of Nebraska, shall be regarded as the sole legal representative of any alien dependents of the employé, residing outside of the United States, and representing the nationality of the employé. Such consular officer or his representative, residing in the state of Nebraska, shall have in behalf of such non-resident dependents, the exclusive right to adjust and settle all claims for compensation provided by this act and to receive for distribution to such non-resident alien dependents all compensation arising hereunder.

SEC. 23. (Death of employé receiving disability compensation) The death of an injured employé prior to the expiration of the period within which he would receive such disability payment, shall be deemed to end such disability, and all liability for the remainder of such payment which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefit in lieu of any further disability indemnity: If the injury so received by such employé

## Nebraska

was the cause of his death, and such deceased employé leaves dependents as hereinbefore specified, wholly or partially dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this act to such deceased employé, to make the total compensation for the injury and death equal to the full amount which such dependents would have been entitled to receive under the provisions of section 22 hereof in case the accident had resulted in immediate death, and such benefit shall be payable in the same manner and subject to the same terms and conditions in all respects, as payments made under the provisions of said section 22. No deduction shall be made for the amount which may have been paid for medical and hospital services and medicines or for the expenses of the last sickness or burial. If the employé die from some cause other than the injury, there shall be no liability for compensation to accrue after his death.

SEC. 24. (Dependents) The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she is living at the time of his death;

(b) A husband upon a wife with whom he is living at the time of her death;

(c) A child or children under the age of sixteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of death of such parent, there being no surviving parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them;

(d) Compensation shall be payable under sections 22 and 23 to or on account of any child, brother or sister, only if and while such child, brother or sister, is under the age of sixteen. No compensation shall be payable under said sections to a widow, unless she was living with her deceased husband at the time of his death; provided, that a wife or a husband living in a state of abandonment for more than two years at the time of the injury, or subsequently, shall not be a beneficiary under this act. The terms "child" and "children" shall include step-children and

## Nebraska

adopted children if members of the decedent's household at the time of his death, and shall include posthumous children. If the compensation payable under said sections to any person shall for any cause cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased. If a widow or widower of a deceased employé shall remarry, then the compensation benefits shall become payable to the child or children of such widow or widower, if there be any such child or children; but if there be no such child or children of such dependent widow or widower, shall not be affected by such remarriage;

(e) In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency;

(f) No person shall be considered a dependent, unless he or she be a member of the family of the deceased employé, or bears to him the relation of widow, or widower, or lineal descendent, or ancestor, or brother, or sister;

(g) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employé, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employé.

SEC. 25. Except as hereinafter provided, all amounts of compensation payable under the provisions of this Act shall be payable periodically in accordance with the method of payment of the wages of the employé at the time of his injury or death.

SEC. 26. Wherever in this Act the term "wages" is used, it

shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, and shall not include gratuities received from the employer or others, nor shall it include board, lodging or similar advantages, received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring. In occupations involving seasonal employment or employments dependent upon the weather, the employé's weekly wages shall be taken to be one-fiftieth of the total wages which he has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employé, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employé, his weekly wages shall be taken to be five and one-half times his average earnings at such rate for a working day of ordinary length, excluding earnings from overtime and using as the basis of calculation his earnings during so much of the preceding six months as he worked for the same employer.

SEC. 27. (Wilful Negligence) If the employé is injured by reason of his intentional wilful negligence, or by reason of being in a state of intoxication, neither he nor his beneficiaries shall receive any compensation under the provisions of this act.

SEC. 28. (Injury increasing disability) If an employé receives an injury, which, of itself, would only cause partial disability, but which, combines with a previous disability, does in fact cause total disability, the employer shall only be liable as for the partial disability, so far as the subsequent injury is concerned.

SEC. 29. (Liability of joint employers) In case any employé for whose injury or death compensation is payable under this Act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this Act, such employers shall contribute to the payment of such compensation in proportion to their several wage liabilities to such employé. If one or more, but not all of such employers should be subject to the provisions of Part II of this Act, then the liability of such of them as are so

## Nebraska

subject shall be to pay that proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employé; Provided, however, that nothing in this section shall prevent any arrangement between employers for a different distribution between themselves of the ultimate burden of compensation.

SEC. 30. (Contributions by employé) No savings or insurance of the injured employé, or any contribution made by him to any benefit fund or protective association independent of this Act shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided, be considered in fixing the compensation under this Act.

SEC. 31. (No waiver of rights) No agreement by an employé to waive his rights to compensation under this Act shall be valid.

SEC. 32. (Minors and mentally incompetent) If an injured employé is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this Act, his guardian or next friend may, in his behalf, claim and exercise such right or privilege.

SEC. 33. (Notice of injury) No proceedings for compensation for an injury under this Act shall be maintained, unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same, or, in case of the death of the employé, or in the event of his physical or mental incapacity within six months after death or the removal of such physical or mental incapacity.

The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury; and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf.

The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the

## Nebraska

person or corporation on whom it is to be served at his last known residence or place of business.

A notice given under the provisions of this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, as the case may be, was in fact mislead thereby. Want of such written notice shall not be a bar to proceedings under this Act, if it be shown that the employer had notice or knowledge of the injury.

## EXAMINATION AND VERIFICATION OF INJURY

SEC. 34. (Examination of injured) After an employé has given notice of an injury as provided in Section 33, and from time to time thereafter during the continuance of his disability, he shall, if so requested by the employer or the insurance company carrying such risk, submit himself to an examination by a physician or surgeon legally authorized to practice medicine under the laws of the State, furnished and paid for by the employer, or the insurance company carrying such risk, as the case may be. The employé shall have the right to have a physician provided and paid for by himself present at the examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation under this Act during the continuance of such refusal and the period of such refusal shall be deducted from the period during which compensation would otherwise be payable.

SEC. 35. (Autopsy) In all death claims, where the cause of death is obscure or disputed, any interested party may require an autopsy, the cost of such autopsy to be borne by the party demanding the same.

## SETTLEMENT AND PAYMENT OF COMPENSATION

SEC. 36. The interested parties shall have the right to settle all matters of compensation between themselves in accordance with the provisions of this act.

SEC. 37. In case of a dispute over, or failure to agree upon a claim for compensation between employer and employé, or the

## Nebraska

dependents of the employé, the claim may be submitted to arbitration in such manner or method as may be mutually agreed upon, or either party may submit the claim, both as to the question of fact, the nature and effect of the injuries, and the amount of compensation therefor, according to the schedule herein provided, to the District Court of the county which would have jurisdiction of a civil action between the parties, which court shall have authority to hear and determine the cause as a suit in equity and enter final judgment therein determining all questions of law and fact in accordance with the provisions of this Act, which judgment shall be final and conclusive unless reversed or modified on appeal or otherwise modified pursuant to the provisions of this Act.

SEC. 38. In case of personal injury, all claim for compensation shall be forever barred unless, within one year after the accident, the parties shall have agreed upon the compensation payable under this Act, or unless, within one year after the accident, one of the parties shall have filed a petition as provided in Section 39 hereof. In case of death, all claims for compensation shall be forever barred unless, within one year after the death, the parties shall have agreed upon the compensation under this Act, or unless within one year after the death, one of the parties shall have filed a petition as provided in Section 39 hereof. Where, however, payments of compensation have been made in any case, said limitation shall not take effect until the expiration of one year from the time of the making of the last payment.

SEC. 39. Procedure in cases of dispute shall be as follows: Either party may file in the District Court a verified petition setting forth the names and residences of the parties and the facts relating to the employment at the time of the injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of or notice to the employer of the occurrence of said injury and such other facts as may be necessary for the information of the court, and also stating the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the filing of such petition a summons shall issue and be served upon the adverse party, as in civil causes, together with a copy of the petition. Return of service shall be made within



four days from the issuance of the summons. Within seven days after the return day of such summons the party upon whom the same is served shall file an answer to said petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute, as disclosed by the petition. The answer shall be verified in like manner as required for a petition. At the expiration of the time fixed for filing answer the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the form of law. Any appeal from such judgment shall be prosecuted in accordance with the general laws of the state regulating appeals and actions at law except that such appeal shall be perfected within thirty days from the entry of the judgment and the cause shall be advanced for hearing in the Supreme Court so as to bring said cause on for argument before such court within sixty days from the filing of the appeal and said Supreme Court shall render its judgment and opinion in such cases within thirty days after submission.

SEC. 40. (Payments in lump sum) The amounts of compensation payable periodically under the law, either by agreement of the parties, or by decision of the court, may be commuted to one or more lump sum payments, except compensation due for death and permanent disability. These may be commuted only with the consent of the District Court.

SEC. 41. (Settlements to be final—exceptions) All settlements by agreement of the parties and all awards of compensation made by the court, except those amounts payable periodically for six months or more, shall be final and not subject to readjustment.

SEC. 42. (When compensation payable periodically may be modified) All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employé or his dependents, by lump sum payments, shall be final, but the amount of any agreement or award payable periodically for more than six months may be modified as follows:

- (a) At any time by agreement of the parties;
- (b) If the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may

## Nebraska

be made to the court by either party on the ground of increase or decrease or incapacity due solely to the injury, or that the condition of a dependent has changed as to age or marriage, or by reason of the death of a dependent. In such case the same procedure shall be followed as in Section 39 in case of disputed claim for compensation.

SEC. 43. (Employer may pay award to trustee and be discharged) At any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer, or by the insurance company carrying such risk, as the case may be, to any savings bank or trust company of this State, in good standing, and such sum together with all interest thereon, shall thereafter be held in trust for the employé or the dependents of the employé, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee to be filed with the Insurance Commissioner, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employé or the dependents of the deceased employé, as the case may be.

SEC. 44. In case of death, where no executor or administrator is qualified, the said court shall, by order, direct payment to be made to such persons as would be appointed administrator of the estate of such decedent upon like terms as to bond for the proper application of compensation payments as are required of administrators.

SEC. 45. (Reports of settlements and accidents) Report of all settlements and releases shall be filed by the employer with the Labor Commissioner within sixty days after such settlements are made. The said report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, age, sex, and occupation of the injured

## Nebraska

employé, and shall state the time, the nature and cause of the injury, and such other information as may be required by the Labor Commissioner. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offense. If the injury shall result in the death of the employé, such report shall show whether the deceased was a citizen of the United States, or an alien; in the event that the deceased was an alien, such report shall show his nationality, and so far as may be known, his place of birth, parentage and names and addresses of dependents. If, as a result of the injury, the death of the employé occurs subsequent to the making of such report, it shall be the duty of the employer to make supplemental report giving the same information as if the injury had caused the immediate death of the employé.

When an injury results in the death of an employé who is a citizen or subject of a foreign country, the Labor Commissioner shall, after such death has been reported to him, at once notify the superior consular officer of the country of which the employé at the time of his death, was a citizen or subject, and whose consular district embraces the state of Nebraska, or the representative, residing in the state of Nebraska, of such consular officer, whom he shall have formally designated as his representative by a communication in writing to the Labor Commissioner. Such notification shall contain in addition to the name of the employé, such further information as the Labor Commissioner may possess respecting the place of birth, parentage, and names and addresses of the dependents of the employé.

SEC. 46. (Insurance) An employer who is liable for compensation as provided in this act may insure the liability to pay such compensation in any liability insurance company or companies licensed to write such risks in the State of Nebraska, or in any mutual insurance association authorized under the laws of the State of Nebraska to assume such risks.

SEC. 47. (Insurance policies) No policy of insurance against liability under this act shall be made unless the same shall cover the entire liability of the employer thereunder and shall contain an agreement by the insurer that, in case the employer shall be or become insolvent, or in case an execution upon a judgment for compensation is returned unsatisfied, an employé of such employer

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Nebraska

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or the dependents of a deceased employé who shall be entitled to compensation under this Act may enforce their claim or claims to compensation against the insurer to the same extent that the employer could have enforced his claim against such insurer had he paid compensation. No suit shall be maintained for the collection of premiums upon any such policy of insurance, unless such covenant is contained in said policy. Such covenant shall be unaffected by any default of the insured in the payment of premiums and shall be construed to be a direct promise to such injured employé and dependents, and shall be enforceable by action brought in the name of such injured employé or in the names of such dependents. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this Act, and provisions thereof inconsistent with this Act shall be void. No company or association shall enter into any such contract for insurance unless such insurer shall have been approved by the State Insurance Commissioner as provided by law.

SEC. 48. (Existing liability insurance contracts) Nothing herein shall affect any existing contract for employers' liability insurance, or affect the organization of any mutual or other insurance company, or any arrangement now existing between employers and employés, providing for the payment to such employés, their families, dependents or representatives, sick, accident or death benefits in addition to the compensation provided for by this Act; but liability for compensation under this Act shall not be reduced or affected by any insurance of the injured employé, or any contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name in the manner provided in Section 47 the liability of any insurer who may, in whole or in part, have insured the liability for such compensation; Provided, however, that payment in whole or in part of such compensation by either the employer, or the insurer, as the case may be, shall, to the extent thereof, be a bar to recovery against the other, of the amount so paid.

## PART III

## MISCELLANEOUS PROVISIONS

SEC. 49. (Employer—how released from claims) If any employé, or his dependents in case of death, of any employer subject to the provisions of Part II of this Act files any claim with, or accepts any payment from such employer, or from any insurance company carrying such risk, on account of personal injury, or makes any agreement, or submits any question to the court under Part II of this Act, such action shall constitute a release to such employer of all claims or demands at law, if any, arising from such injury.

SEC. 50. (Payments not assignable) No payments under this Act shall be assignable or subject to attachment or garnishment, or be held liable in any way for any debts, except as provided in Section 8 hereof.

SEC. 51. (Preference as to compensation) The right to compensation and all compensation awarded any injured employé or for death claims to his dependents (without limit of amount), shall have the same preference against the assets of the employer as unpaid wages for labor, but such compensation shall not become a lien on the property of third persons by reason of such preference.

## WORDS AND PHRASES DEFINED

SEC. 52. Throughout this Act, the following words and phrases as used therein shall be considered to have the following meaning respectively, unless the context shall clearly indicate a different meaning in the construction used:

(a) The term "physician" shall include "Surgeon," and in either case shall mean one legally authorized to practice his profession within the State of Nebraska, and in good standing in his profession at the time.

(b) The word "Accident," as used in this Act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event happening suddenly and violently, with or without human fault and producing at the time objective symptoms of an injury.

The terms "Injury" and "Personal injuries" shall mean only

## Nebraska

violence to the physical structure of the body and such disease or infection as naturally results therefrom. The said terms shall in no case be construed to include occupational disease in any form, or any contagious or infectious disease contracted during the course of employment, or death due to natural causes but occurring while the workman is at work.

"Death" when mentioned as a basis for the right to compensations means only death resulting from such violence and its resultant effects occurring within three hundred and fifty weeks after the accident.

(c) (Personal injuries, etc.) Without otherwise affecting either the meaning or interpretation of the abridged clause, "Personal injuries arising out of and in the course of employment," it is hereby declared:

Not to cover workmen except while engaged in, on or about the premises where their duties are being performed, or where their service requires their presence as a part of such services at the time of the injury, and during the hours of service as such workmen.

(d) (Wilful negligence) For the purposes of this Act, wilful negligence shall consist of (1) deliberate act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication at the time of the injury.

(e) Whenever in this Act the singular is used, the plural shall be included; where the masculine gender is used, the feminine shall be included.

(f) The designation "State Insurance Commissioner" or "Insurance Commissioner" as used herein is intended to mean the State official who has charge of the Insurance Department of the State of Nebraska.

(g) The "court" as used herein shall mean the District Court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and the "judge" shall mean a judge of said court.

SEC. 53. (Rights of action preserved) Every right of action for death by wrongful act, or for injury by negligence, accruing to an injured employé prior to the taking effect of this act is continued and preserved under the existing law.

SEC. 54. (Extension of time limit for commencement of ac-

## Nebraska

tions at common law if Act repealed or held invalid) If the provisions of this Act relating to the compensation for injuries to or death of workmen shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal, or the final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury.

SEC. 55. (As to constitutionality) In case for any reason any paragraph or any provision of this Act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to effect any other paragraph or provision of this Act, except that Parts I and II are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fall, the other part shall fall with it and not stand alone. Part I of this Act shall not apply in cases where Part II becomes operative in accordance with the provisions thereof, but shall apply in all other cases when the employer is subject to the provisions of this act and in such cases shall be in extension or modification of the common law.

SEC. 56. (Acts repealed) All acts or parts of acts inconsistent with this Act are to be deemed replaced by this Act and to that end are hereby repealed.

SEC. 57. This Act shall be known as the "Workmen's Compensation Law of 1913."

Exact copy of the "Workmen's Compensation Law of 1913" Senate File No. 1, as passed by the Legislature of the State of Nebraska, and signed by John E. Morehead, Governor, April 21st, 1913.

Senate File No. 1.

S. R. McKELVIE, *President of Senate.*

Attest: CLYDE H. BARNARD, *Secretary of Senate.*

P. C. KELLEY, *Speaker of House of Representatives.*

Attest: HENRY C. RICHMOND, *Chief Clerk of House of*

Approved April 21, 1913, 9 A. M.

*Representatives.*

JOHN H. MOREHEAD, *Governor.*

Nebraska

STATE OF NEBRASKA, ss.

I, Clyde H. Barnard, Secretary of Senate, hereby certify that the within Bill originated in the Senate and passed the Legislature of the Thirty-third Session on the 16th day of April, 1913.

Clyde H. Barnard,  
*Secretary of Senate.*

Received April 22, 1913.

Addison Wait,  
Secy. of State.

STATE OF NEBRASKA

OFFICE OF SECRETARY OF STATE

STATE OF NEBRASKA }  
Office of }  
Secretary of State }

I, ADDISON WAIT, Secretary of State of the State of Nebraska, do hereby certify that I have carefully compared the annexed copy of Senate File No. 1 enacted and passed by the thirty-third session of the Legislature of the State of Nebraska, with the enrolled bill on file in this office, and that the same is a true and correct copy of said Senate File No. 1.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

[SEAL] Done at Lincoln this 30th day of April in the year of our Lord One Thousand Nine Hundred and Thirteen of the Independence of the United States the One Hundred and Thirty-sixth and of this State the Forty-sixth.

Addison Wait,  
*Secretary of State.*

By G. W. Marsh,  
*Deputy.*



## NEVADA

(L. 1913, c. 111)

### AN ACT

Relating to the compensation of injured workmen in the industries of this State and the compensation to their dependents where such injuries result in death, creating an industrial insurance commission; providing for the creation and disbursement of funds for the compensation and care of workmen injured in the course of employment, and defining and regulating the liability of employers to their employés; and repealing all acts and parts of acts in conflict with this act.

Approved March 15, 1913.

*The People of the State of Nevada, represented in Senate and Assembly do enact as follows:*

SECTION 1. (a) Where two or more employés, as defined by this Act, are employed in the same general employment and in the usual ordinary transaction of the business, it shall be presumed that the employer, as defined by this Act has elected to provide, secure and pay compensation according to the terms, conditions and provisions of this Act, to such employés who sustain personal injury, arising out of and in the course of the employment and in such case the employer shall be relieved from liability for recovery of damages or other compensation for such personal injuries, unless by the terms of this Act otherwise provided:

(b) Where the State, county, municipal corporation, school district, cities under special charter or commission form of government is the employer, the limitations of two employés shall not apply, and as to such employés and employers thereof the rights and remedies as by this Act provided to pay compensation for personal injury sustained by such employés arising out of and in

## Nevada

the course of the employment shall be exclusive, compulsory and obligatory.

(c) If an employer having the right under the provisions of this Act to elect to reject the terms, conditions and provisions thereof and in such case exercises the right in the manner and form by this Act provided, such employer shall not escape liability for personal injury sustained by an employé of such employer when the injury sustained arises out of and in the usual course of the employment because:

(1) The employé assumed the risks inherent to or incidental to or arising out of his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employés in the business;

(2) That the injury was caused by the negligence of a co-employé;

(3) That the employé was negligent unless and except it shall appear that such negligence was wilful and with intent to cause the injury; or the result of intoxication on the part of the injured party;

(4) In actions by an employé against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this Act, it shall be presumed that the injury to the employé was the first result and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence.

Every such employer shall be conclusively presumed to have elect to provide, secure and pay compensation to employés for injuries sustained arising out of and in the course of the employment according to the provisions of this Act, unless and until notice in writing of an election to the contrary shall have been given to the employé by posting the same in some conspicuous place at the place where the business is carried on, and also by filing notice with the Nevada Industrial Commission with return thereon by affidavit showing the date notice was posted as by this Act provided, substantially in the following form:

## EMPLOYERS' NOTICE TO REJECT

To the Employés of the Undersigned, and the Nevada Industrial Commission:

You and each of you are hereby notified that the undersigned rejects the terms, conditions and provisions to provide, secure and pay compensation to employés of the undersigned for injuries received as provided in the Act of the Legislature of the State of Nevada known as Nevada Industrial Insurance Act, and elects to pay damages for personal injuries received by such employés under the common law and the statutes of this State modified by subdivisions, one, two, three and four of section one of the said Nevada Industrial Insurance Act and Acts amendatory thereto.

Signed

STATE OF NEVADA, }  
COUNTY OF } ss:

The undersigned being duly sworn deposes and says that a true, correct and verbatim copy of the foregoing notice was on the  
day of , 191 , posted at  
(state fully place where posted).

Subscribed and sworn to before me by this day  
of , 191

Notary Public.

The employer shall keep such notice posted in some conspicuous place which shall apply to the employés subsequently employed by the employer with the same force and effect and to the same extent and in like manner as employés in the employ at the time the notice was given.

Where the employer and employé have not given notice of an election to reject the terms of this Act, every contract of hire, express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employé to accept compensation in the manner as by this Act provided for all personal injuries sustained arising out of and in the course of the employment.

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Nevada

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SECTION 2. No compensation under this Act shall be allowed for an injury caused:

(a) By the employé's wilful intention to injure himself or to wilfully injure another; nor shall compensation be paid to an injured employé if injury is sustained while intoxicated.

SECTION 3. (a) The rights and remedies provided in this Act for an employé on account of an injury shall be exclusive of all other rights and remedies of such employé, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; all employés affected by this Act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this Act until notice in writing shall have been served upon his employer; and also on the Nevada Industrial Commission, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(b) In the event that such employé elects to reject the terms, conditions and provisions of this Act, the rights and remedies thereof shall not apply where an employé brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this Act; and in such actions where the employé has rejected the terms of this Act the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow servant shall apply and be available to the employer unless otherwise provided in this Act. *Provided, however,* that if an employé sustains an injury as the result of the employer's failure to furnish or fails to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violate any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employés, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employé shall be substantially in the following form:

Nevada

## EMPLOYÉ'S NOTICE TO REJECT TERMS OF THIS ACT

To (Name of employer) and the Nevada Industrial Commission:

You and each of you are hereby notified that the undersigned elects to reject the terms, conditions and provisions of an Act for the payment of compensation as provided by the Industrial Insurance Act of the State of Nevada and Acts amendatory thereto, and elects to rely upon the common law as modified by section three of the said Act for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this            day of            , 19 .  
Signed

STATE OF NEVADA, }  
COUNTY OF        } ss.

The undersigned being first duly sworn deposes and says that the written notice was on the            day of            , 19 , served on the within named employer of the undersigned by delivering to (Name of person served) a true, correct and verbatim copy thereof.

Subscribed and sworn (or affirmed) to before me by the said  
this            day of            , 19 .

Notary Public.

SECTION 4. (a) Where the employer or employé has given notice in compliance with this Act electing to reject the terms thereof, such election shall be for one year from date of becoming effective, and unless renewed within thirty days before the termination of one year as herein provided, it shall be conclusively presumed that such party has elected to waive the rejection made and come under the provisions of this Act to provide, secure and pay or accept, as the case may be, the compensation herein provided until the contrary is shown by the service of notice anew electing to reject the provisions of this Act as herein provided:

(b) When an employer or employé rejects the terms, conditions or provisions of this Act, such party may at any time thereafter

## Nevada

elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of this Act, and which shall become effective when filed with the Nevada Industrial Commission.

SECTION 5. Where the employer and employé elect to reject the terms, conditions and provisions of this Act, the liability of the employer shall be the same as though the employé had not rejected the terms, conditions and provisions thereof.

SECTION 6. An employer having come under this Act, who thereafter elects to reject the terms, conditions and provisions thereof, shall not be relieved from the payment of premiums to Nevada Industrial Commission prior to the time his notice of rejection becomes effective; and said premiums may be recovered in an action at law as hereinafter in this Act provided.

SECTION 7. When an employé coming under the provisions of this Act receives an injury for which compensation is payable under this Act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof:

(a) The employé or beneficiary may take proceedings against that person to recover damages, but the amount of the compensation to which he is entitled under this Act shall be reduced by the amount of the damages recovered;

(b) If the employé or beneficiary in such case receives compensation under this Act, the Nevada Industrial Commission by whom the compensation was paid, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employé to recover therefor;

(c) No contractor or sub-contractor shall be entitled to receive compensation under this Act, but shall be deemed to be an employer.

SECTION 8. There is hereby created the Nevada Industrial Commission to be composed of five members, to wit: The Governor, State Mine Inspector and Attorney-General and two others to be selected by the three named. The two members so selected shall hold office for four years from and after the date of their appointment. The two additional members of the Commission other than the Governor, State Mine Inspector and Attorney-General shall receive as compensation for their services the sum of ten dollars per day for all days in which they are actually engaged in the business

## Nevada

of the Commission, which in no case shall exceed one hundred and fifty (\$150) dollars per month. A majority of said Commission shall constitute a quorum for the transaction of the business of the Commission.

SECTION 9. The Commission shall be in continuous session and open for the transaction of business during all the business hours of each and every day excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the Commission shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling of each member's name by the secretary and each vote shall be considered as cast.

SECTION 10. The Commission shall keep and maintain its office in the town of Carson City, Nevada, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals and maps. All necessary expenses shall be audited and paid out of the State Treasury. The Commission may hold sessions at any place within the State.

SECTION 11. The Commission may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation. Such employments and compensation shall be first approved by the Governor, and shall be paid out of the State Treasury. The members of the Commission, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants that may be employed shall be entitled to receive from the State Treasury their actual and necessary expenses while traveling in the business of the Commission. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the Commission.

SECTION 12. The Commission shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accidents and injury to employes, the nature and extent of the proofs and evidence and the method of taking and furnishing the same, to establish the rights to benefits of compensation from the State Insurance Fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation there-

## Nevada

from, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

SECTION 13. Every employer shall furnish the Commission, upon request, all information required by it to carry out the purposes of this Act. The Commission or any member thereof or any person employed by the Commission for that purpose, shall have the right to examine under oath any employer or officer, agent or employé thereof.

SECTION 14. Every employer receiving from the Commission any blank with directions to fill the same, shall cause the same to be properly filled out as to answer fully and correctly all questions therein propounded, and if unable to do so shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the board within the period fixed by the Commission for such return.

SECTION 15. Each member of the Commission, the secretary and every inspector or examiner appointed by the Commission shall, for the purposes contemplated by this Act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

SECTION 16. In case of disobedience of any person to comply with the order of the Commission, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may lawfully interrogated, or refuse to permit an inspection as aforesaid, the District Judge of the county in which the person resides, on application of any member of the commission, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from such court on a refusal to testify therein.

SECTION 17. Each officer who serves such subpoenas shall receive the same fees as a Sheriff, and each witness who appears, in obedience to a subpoena, before the Commission or an inspector or examiner, shall receive for his attendance the fees provided for witnesses in civil cases in courts of record, which shall be audited and paid from the State Treasury in the same manner as other expenses are audited and paid, upon the presentation of



## Nevada

proper vouchers approved by any two members of the Commission. No witness subpoenaed at the instance of a party other than the Commission or any inspector shall be entitled to compensation from the State Treasury unless the Commission shall certify that his testimony was material to the matter investigated.

SECTION 18. In an investigation, the Commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by the law for like depositions in civil actions in the courts of record.

SECTION 19. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the Commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of record.

SECTION 20. The Commission shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the State Insurance Fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

SECTION 21. Each employer coming within the provisions of this Act shall prior to August 15, of the year 1913, pay into the State Treasury for the State Insurance Fund in accordance with the following schedule a sum equal to a percentage of his total payroll for the preceding month, to-wit:

## CONSTRUCTION WORK. INITIAL PREMIUM RATES

Tunnels; bridges; trestles; sub-aqueous works;  
ditches and canals (other than irrigation

Nevada

without blasting); fire escapes; sewers; house moving; house wrecking.....	.035
Iron, or steel structures or parts of structures.....	.040
Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads.....	.050
Steeple, towers or grain elevators, not metal framed; chimneys; waterworks or systems; electric railways with rockwork or blasting; blasting; erecting fireproof doors or shutters.....	.050
Steam heating plants; tanks, water towers or windmills, not metal frames.....	.040
Shaft sinking.....	.030
Concrete buildings; freight or passenger elevators; fire proofing of buildings; galvanized iron or tin works; gas works or systems; marble, stone or brick work; road work with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys.....	.050
Excavations not otherwise specified; blast furnaces.....	.030
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings.....	.025
Carpenter work not otherwise specified.....	.035
Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; painting of buildings or structures; installation of automatic sprinklers; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified.....	.030
Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; build-	

## Nevada

ing hothouses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making. . . . . .020

The absence of power-driven machinery does not exempt corporations named in this subdivision, nor the small number of employes engaged, nor the short time required to accomplish the work.

## OPERATION (INCLUDING REPAIR WORK) OF—

(All combinations of material take the higher rate when not otherwise provided.) Operation and Repair Work.

Logging railroads; railroads; dredges; interurban electric railroads using third rail system. . . . .025

Electric light or power plants; interurban electric railroads not using third rail system; quarries .025

Street railways; all employes; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries. . . . .030

Mines, other than coal; steam heating or power plants. . . . .025

Grain elevators; laundries; waterworks; paper or pulp mills; garbage works. . . . .020

## FACTORIES USING POWER-DRIVEN MACHINERY—

## FACTORIES

Stamping tin or metal. . . . .045

Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; woodenware or wooden fiberware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries,

## Nevada

metal stamping extra; creosoting works; pile treating works.....	.020
Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; hardware; tile; brick, terra cotta; fire clay; pottery; earthenware; porcelain; peat fuel, brickettes.....	.020
Brewers; bottling works; boiler works; foundries; machine shops not otherwise specified.....	.020
Cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified.....	.015
Making jewelry, soap, tallow, lard, grease, condensed milk.....	.015
Creameries; printing; electrotyping; photo-engraving; engraving; lithographing.....	.015

## MISCELLANEOUS WORK

Operating stock yards, with or without railroad entry; packing houses.....	.025
Artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified.....	.020
Theater stage employés.....	.015
Fireworks manufacturing.....	.050
Powder works.....	.100
All other employments not herein specified.....	.015

SECTION 21a. The Nevada Industrial Commission shall have the power as experience and conditions demand to increase or decrease the rates above provided. Sixty days' notice of any change in rates shall be given before the same shall become effective; *Provided, further*, that said Commission shall have the power and it shall be their duty, to classify employment with respect to their degree of hazard and determine the risk of same based upon the payroll and number of employés in each of said classes of employment sufficiently large to provide an adequate fund for the compensation provided for in this Act, and to create a surplus

## Nevada

sufficiently large to guarantee a satisfactory insurance fund from year to year.

SECTION 22. Whenever because of poor or careless management an establishment or work is unduly dangerous in comparison with other like establishments or works the Nevada Industrial Commission may advance its classification of risks and premium rates in proportion to the undue hazards. Such advancement of classification of risk and premium rates may be made without notice.

SECTION 23. The premiums above provided shall be paid on or before the 15th day of each and every month, commencing on the 15th day of August, 1913, and each and every month thereafter upon the payroll for the month preceding.

SECTION 24. All premiums provided for in this Act shall be paid to the State Treasurer, and shall constitute the State Insurance Fund for the benefit of employes of employers and for the benefit of dependents of such employes, and shall be disbursed as hereinafter provided.

SECTION 25. Every workman coming within the provisions of this Act who shall be injured in the course of employment, or his dependents, as hereinafter defined, shall be entitled to receive the following compensation:

(a) In the event of death of any employe or workman coming within the provisions of this Act, his dependents, or beneficiaries, shall be entitled to receive an amount equivalent to fifty per cent of his average monthly earnings; but not less than \$20, nor more than \$60 per month for a period of one hundred months, but in no case to exceed the sum of \$5,000, and the burial expenses of such deceased workman shall be paid not to exceed the sum of \$125.

(b) If an employe leaves no dependents of any kind, expenses of his last sickness and burial shall be paid, not to exceed the sum of \$125.

(c) For complete disability, compensation fifty per cent of the average monthly wages, but not more than \$60, nor less than \$20 per month for one hundred months; total not to exceed \$5,000.

(d) For partial disability, one-half the difference between the wages earned before injury and wages which injured is able to earn thereafter, but not more than \$40 a month for a period not to exceed sixty months.

## Nevada

Specific payments of injuries as per the following schedule, subject to a maximum of \$60.00 and a minimum of \$20.00 per month:

For the loss of a thumb, fifty per cent of the average monthly wages during fifteen months.

For the loss of a first finger, commonly called the index finger, fifty per cent of the average monthly wages during nine months.

For the loss of a second finger, fifty per cent of the average monthly wages during seven months.

For the loss of a third finger, fifty per cent of the average monthly wages during five months.

For the loss of a fourth finger, commonly called the little finger, fifty per cent of the average wages during four months.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; *provided, however*, that in no case shall the amount received for more than one finger, exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per cent of the average monthly wages during seven months.

For the loss of one of the other toes other than the great toe, fifty per cent of the average monthly wages during two months and one-half.

However, the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per cent of the average monthly wages during forty months.

For the loss of an arm, fifty per cent of the average monthly wages during fifty months.

For the loss of a foot, fifty per cent of the average monthly wages during thirty-five months.

For the loss of a leg, fifty per cent of the average monthly wages during forty-five months.

For the loss of an eye, fifty per cent of the average monthly wages during twenty-five months.

However, the loss of both hands, or both arms, or both legs, or

both eyes, or any part thereof, shall constitute total and permanent disability to be compensated according to the provisions of § 25, subdivision "C".

SECTION 26. The following shall be conclusively presumed to be wholly dependent upon a deceased employé:

(1) The surviving spouse, unless it be shown that the survivor wilfully deserted deceased without fault upon the part of deceased, and if it be shown that the survivor deserted deceased without fault upon the part of deceased, the survivor shall not be regarded as a dependent in any degree.

(2) A child or children under sixteen years of age (and over said age if physically or mentally incapacitated from earning) whether actually dependent for support upon the parent at the time of his or her death.

(3) A parent of a minor entitled to the earnings of the employé shall be presumed to be dependent for a period not to exceed four years.

(4) If the deceased employé leaves dependent surviving spouse, the full compensation shall be paid to such spouse; but if the dependent surviving spouse dies before payment is made in full, the balance remaining shall be paid to the person or persons wholly dependent, if any, share and share alike. If there be no person or persons wholly dependent, then payment shall be made to partial dependents.

(5) In all other cases questions of dependency in whole or in part shall be determined in accordance with the fact as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death-benefit shall be equally divided among them, and persons partially dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency; *provided, however*, that when a lump sum is paid as contemplated by this Act, the court or Commission in making distribution thereof, shall take into consideration the contingent rights of partial beneficiaries or the rights of those who may become such after a wholly dependent child or children become sixteen years of age.

(6) Step-parents shall be regarded in this Act as parents.

## Nevada

(7) Adopted child or children or step-child or children shall be regarded in this Act the same as if issue of the body.

SECTION 27. No compensation shall be paid under this Act for an injury which does not incapacitate the employé for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury; *Provided, however*, that if such disability continues for eight weeks or longer, such compensation shall be computed from the date of the injury.

SECTION 28. No money paid, or payable, under this Act out of the State Insurance Fund shall, prior to the issuance and delivery of the warrant therefor, be capable of being assigned; nor shall the same be ever taken in execution, or attached or garnished, nor shall same pass to any other person by operation of law. Any such assignment or charge shall be void.

SECTION 29. No employer or workman shall exempt himself from the burden, or waive the benefits of this Act by any contract, agreement, rule, regulation or device; and any such contract, agreement, rule, regulation or device shall be absolutely void.

SECTION 30. Upon the marriage of a widow, she shall receive once and for all, a lump sum equal to twelve times per monthly allowance, not to exceed, however, the sum of \$300; *provided, however*, that allowance shall be made by the Commission for the support of minor children under the age of sixteen years; the total amount thereof to be not less than \$10, nor more than \$35 per month, to be fixed by the Commission.

SECTION 31. The Nevada Industrial Commission, may, in its discretion, allow the conversion of the compensation herein provided for into a lump sum payment, not to exceed the sum of \$5,000, under such rules and regulations and system of computation as may be devised for obtaining the present value of such compensation.

SECTION 32. Any workman entitled to receive compensation under this Act is required, if requested by the Commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the Commission. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until



such examination has taken place, and no compensation shall be payable during or for account of such period.

SECTION 33. Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the Commission, and also to any local representative of the Commission. Such report shall state:

(1) The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

(2) Whether the accident arose out of or in the course of the injured person's employment.

(3) Any other matters the rules and regulations of the Commission may prescribe.

SECTION 34. (a) Where a workman is entitled to compensation under this Act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this Act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this Act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this Act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

SECTION 35. The books, records and payrolls of the employer pertinent to the administration of this Act shall always be open for inspection by the Commission or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the

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Nevada

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payroll, the men employed, and such other information as may be necessary for the Commission and its management under this Act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection to any member of the Commission or any assistant presenting written authority from the Commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the Nevada Industrial Commission and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

SECTION 36. Any employer who shall misrepresent to the department the amount of payroll upon which the premium under this Act is based shall be liable to the Nevada Industrial Commission in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the Nevada Industrial Commission shall be enforced in a civil action in the name of the Nevada Industrial Commission. All sums collected under this section shall be paid into the accident fund.

SECTION 37. If any employer shall default in any payment to the accident fund hereinbefore in this Act required, the sum due shall be collected by action at law in the name of the Nevada Industrial Commission as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under § 6, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this Act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident) as he would have been prior to the passage of this Act. In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this Act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this Act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this Act. If

## Nevada

such person shall take under this Act, the cause of action against the employer shall be assigned to the Nevada Industrial Commission for the benefit of the accident fund. In any suit brought upon such cause of action the measure of liability shall be as provided in § 1, subdivision "C"—1, 2, 3 and 4—of this Act. Any such cause of action assigned to the Nevada Industrial Commission may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

SECTION 38. The Nevada Industrial Commission is hereby authorized and empowered to prosecute, defend and maintain actions in the name of the Commission for the enforcement of the provisions of this Act, and verification of any pleading, affidavit or other paper required may be made by any member of the Commission or by the Secretary thereof. In any action or proceeding or in the prosecution of any appeal by the Commission, no bond or undertaking shall ever be required to be furnished by the Commission.

SECTION 39. If any workman be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance or any departmental regulation under any statute, or be at the time of the injury of less than the maximum age prescribed by law for the employment of the minor in the occupation in which he shall be engaged when injured, the employer shall be liable to the Nevada Industrial Commission for a penalty of not less than \$300 or more than \$2,000 to be collected in a civil action at law by the Commission.

The foregoing provision of this Act shall not apply to the employer if the absence of such guard or such protection be due to the removal thereof by the injured workman himself, or with his knowledge, or by any fellow workman, unless such removal be by order or direction of the employer or superintendent or foreman of the employer. If the removal of such guard or protection be by the workman himself, or be by his consent, by any of his fellow workmen, unless done by order or direction of the employer or superintendent or foreman of the employer, the compensation of

## Nevada

such injured workman, as provided for by § 25 of this Act, shall be reduced twenty-five per cent.

SECTION 40. The State of Nevada shall not be liable for the payment of any compensation under this Act, save and except from the said State Insurance Fund, to be derived from the payment of premiums as provided in this Act.

SECTION 41. The expenses of the administration of the Commission, including the payment of the salaries of Commissioners, and other expenses other than the payment of compensation under this Act, shall not exceed ten per cent of the amount of premiums paid into said Insurance Fund.

SECTION 42. This Act shall be known as the "Nevada Industrial Insurance Act."

SECTION 43. This Act shall apply to all employers of labor in the State of Nevada and their employes and the dependents of their employes, except domestic servants and farm laborers, and no contract of employment, insurance, relief benefit or indemnity or any other device shall modify, change or waive any liability created by this Act, and such contract of employment, relief benefit, insurance or indemnity, or other device having for its purpose the waiver or modification of the terms or liability created by this Act shall be void.

SECTION 44. If any employer shall be adjudicated to be outside the lawful scope of this Act, the Act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this Act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this Act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of § 21 of this Act for the creation of the Insurance Fund, or the provisions of this Act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman, shall be held invalid, the entire Act shall be thereby invalidated except the provisions of § 46, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this Act shall not affect the validity of the Act as a whole or any other part thereof.

SECTION 45. If the provisions of this Act relative to compensa-

## Nevada

tion for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this Act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death; Provided, that such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the Insurance Fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the Insurance Fund the payment provided for by § 21, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited, but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

SECTION 46. If this Act shall be hereafter repealed, all moneys which are in the Insurance Fund at the time of the repeal shall be subject to such disposition as may be provided by the Legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

SECTION 47. This Act shall not affect any action pending or cause of action existing on June 30, 1913.

SECTION 48. This Act shall be effective July 1, 1913.

SECTION 49. All Acts and parts of Acts in conflict herewith are hereby repealed.

STATE OF NEVADA, }  
DEPARTMENT OF STATE } ss:

I, GEORGE BRODIGAN, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the original ASSEMBLY BILL No. 121, RELATING TO THE COMPENSATION OF INJURED WORKMEN IN THE INDUSTRIES OF THIS STATE, APPROVED MARCH 15th, 1913, now on file and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and

Nevada

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affixed the Great Seal of State, at my office in Carson City, Nevada, this fifth day of April, A. D. 1913.

GEO. BRODIGAN,  
*Secretary of State.*

By J. WHEGATE,  
*Deputy.*

## NEW HAMPSHIRE

(L. 1911, c. 163)

**SECTION 1.** This act shall apply only to workmen engaged in manual or mechanical labor in the employments described in this section, which, from the nature, conditions or means of prosecution of such work, are dangerous to the life and limb of workmen engaged therein, because in them the risks of employment and the danger of injury caused by fellow servants are great and difficult to avoid.

(a) The operation on steam or electric railroads of locomotives, engines, trains or cars, or the construction, alteration, maintenance or repair of steam railroad tracks or road beds over which such locomotives, engines, trains or cars are or are to be operated.

(b) Work in any shop, mill, factory or other place on, in connection with or in proximity to any hoisting apparatus, or any machinery propelled or operated by steam or other mechanical power in which shop, mill, factory or other place five or more persons are engaged in manual or mechanical labor.

(c) The construction, operation, alteration or repair of wires or lines of wires, cables, switch boards or apparatus, charged with electric currents.

(d) All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry, or to any steam boiler owned or operated by the employer, provided injury is occasioned by the explosion of any such boiler or explosive.

(e) Work in or about any quarry, mine or foundry.

As to each of said employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

**SECTION 2.** If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment is caused to any workman employed therein, in whole or in part, by failure of the employer to comply with any statute, or with any order made under authority of law, or by the negligence of the employer or any of his or its officers, agents or employees, or by reason of any defect or insufficiency

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New Hampshire

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due to his, its or their negligence in the condition of his or its plant, ways, works, machinery, cars, engines, equipment, or appliances, then such employer shall be liable to such workman for all damages occasioned to him, or, in case of his death, to his personal representatives for all damages now recoverable under the provisions of Chap. 191 of the Public Statutes. The workman shall not be held to have assumed the risk of any injury due to any cause specified in this section; but there shall be no liability under this section for any injury to which it shall be made to appear by a preponderance of evidence that the negligence of the plaintiff contributed. The damages provided for by this section shall be recovered in an action on the case for negligence.

SECTION 3. The provisions of section 2 of this act shall not apply to any employer who shall have filed with the Commissioner of Labor his declaration in writing that he accepts the provisions of this act as contained in the succeeding sections, and shall have satisfied the Commissioner of Labor of his financial ability to comply with its provisions, or shall have filed with the Commissioner of Labor a bond, in such form and amount as the Commissioner may prescribe, conditioned on the discharge by such employer of all liability incurred under this act. Such bond shall be enforced by the Commissioner of Labor for the benefit of all persons to whom such employer may become liable under this act in the same manner as probate bonds are enforced. The Commissioner may, from time to time, order the filing of new bonds, when in his judgment such bonds are necessary; and after thirty days from the communication of such order to any employer, such employer shall be subject to the provisions of section 2 of this act until such order has been complied with. The employer may at any time revoke his acceptance of the provisions of the succeeding sections of this act by filing with the Commissioner of Labor a declaration to that effect, and by posting copies of such declaration in conspicuous places about the place where his workmen are employed. Any person aggrieved by any decision of the Commissioner under this section may apply by petition to any Justice of the Superior Court for a review of such decision and said Justice on notice and hearing shall make such order affirming, reversing or modifying such decision as justice may require; and such order shall be final.



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New Hampshire

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Such employer shall be liable to all workmen engaged in any of the employments specified in section 1, for any injury arising out of and in the course of their employment, in the manner provided in the following sections of this act.

Provided, that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and,

Provided, that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the intoxication, violation of law or serious or wilful misconduct of the workman.

Provided, further, that the employer shall at the election of the workman, or his personal representative, be liable under the provisions of section 2 of this act for all injury caused in whole or in part by wilful failure of the employer to comply with any statute, or with any order made under authority of law.

SECTION 4. The right of action for damages caused by any such injury, at common-law, or under any statute in force on January one, nineteen hundred and eleven, shall not be affected by this act, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this act, either by accepting any compensation hereunder, by giving the notice hereinafter prescribed, or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in every action at common law or under any other statute on account of the same injury. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this act against the employer therefor, he shall be barred from all benefit of this act in regard thereto.

SECTION 5. No proceedings for compensation under this act shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured and during such disability, and unless claim for compensation has been made within six months from the occurrence of the accident, or in case of the death of the workman, or in the event of his physical or

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New Hampshire

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mental incapacity within six months after such death or the removal of such physical or mental incapacity, or in the event that weekly payments have been made under this article, within six months after such payments have ceased, but no want or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall apprise the employer of the claim for compensation under this article, and shall state the name and address of the workman injured, and the date and place of the accident. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

SECTION 6. (1) The amount of compensation shall be, in case death results from injury:

(a) If the workman leaves any widow, children or parents, resident of this State, at the time of his death, then wholly dependent on his earnings, a sum to compensate them for loss, equal to one hundred and fifty times the average weekly earnings of such workman when at work on full time during the preceding year during which he shall have been in the employ of the same employer, or if he shall have been in the employment of the same employer for less than a year then one hundred and fifty times his average weekly earnings on full time for such less period, but in no event shall such sum exceed \$3,000. Any weekly payment made under this act shall be deducted from the sum so fixed.

(b) If such widow, children or parents at the time of his death are in part only dependent upon his earnings, such proportion of the benefits provided for those wholly dependent as the amount of wage contributed by the deceased to such partial dependents at the time of injury bore to the total wage of the deceased.

(c) If he leaves no such dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars.

Whatever sum may be determined to be payable under this act in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

## New Hampshire

(2) Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, not exceeding fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding one-half the average weekly earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earnings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise, after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this act exceed the damage suffered, nor shall any weekly payment payable under this act in any event exceed ten dollars a week or extend over more than three hundred weeks from the date of the accident. Such payment shall continue for such period of three hundred weeks provided total or partial disability continue during such period. No such payment shall be due or payable for any time prior to the giving of the notice required by section 5 of this act.

SECTION 7. Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within two weeks after the injury, and thereafter at intervals not oftener than once in a week. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be sus-

pendent until such examination has taken place, and no compensation shall be payable during or for account of such period.

SECTION 8. In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this act, the guardian of the incompetent appointed pursuant to law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege, and no limitation of time in this act provided for shall run so long as said incompetent workman has no guardian.

SECTION 9. Any question as to compensation which may arise under this act shall be determined by agreement or by an action at equity, as hereinafter provided. In case the employer fail to make compensation as herein provided, the injured workman, or his guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this act in any court having jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. Such action shall be by petition in equity, which may be made returnable at the appropriate term of the Superior Court or may be filed in the office of the Clerk of the Superior Court and presented in term time or vacation to any justice of said court, who on reasonable notice shall hear the parties and render judgment thereon. The judgment in such action if in favor of the plaintiff shall be for a lump sum equal to the amount of payments then due and prospectively due under this act. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the Probate Court in which such executor or administrator is appointed, in accordance with this act, on petition of any party interested, on such notice as such court may direct. Any employer who has declared his intention to act under the compensation features of this act shall also have the right to apply by similar proceedings to the Superior Court or to any justice thereof for a determination of the amount of the weekly payments to be paid the injured workman, or of a lump sum to be paid the injured workman in lieu of such weekly payments; and either

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New Hampshire

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such employer or workman may apply to said Superior Court or to any justice thereof in similar proceedings for the determination of any other question that may arise under the compensation feature of this act; and said court or justice, after reasonable notice and hearing, may make such order as to the matter in dispute and taxable costs as justice may require.

SECTION 10. Any person entitled to weekly payments under this act against any employer shall have the same preferential claim therefor against the assets of the employer as is allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this act shall not be assignable or subject to levy, execution, attachment or satisfaction of debts. Any right to receive compensation under this act shall be extinguished by the death of the person entitled thereto.

SECTION 11. No claim of any attorney-at-law for any contingent interest in any recovery under this act for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the account of the same be approved in writing by a justice of the Superior Court, or, in case the same be tried in any court, by the justice presiding at such trial.

SECTION 12. Every employer subject to the provisions of this act, shall from time to time make to the Commissioner of Labor such returns as to its operation as said Commissioner may require upon blanks to be furnished by said Commissioner. Any employer failing to make such returns when required by said Commissioner shall, until such returns are made, be subject to the provisions of § 2 of this act.

SECTION 13. This act shall take effect January first, nineteen hundred and twelve.

Approved April 15, 1911.

## NEW JERSEY

(As am'd in 1913)

AN ACT prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder.

*Be it enacted by the Senate and General Assembly of the State of New Jersey:*

### SECTION I. COMPENSATION BY ACTION AT LAW

1. When personal injury is caused to an employé by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employé was himself not wilfully negligent at the time of receiving such injury, and the question of whether the employé was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence.

2. The right to compensation as provided by § 1 of this act shall not be defeated upon the ground that the injury was caused in any degree by the negligence of a fellow employé; or that the injured employé assumed the risks inherent in or incidental to or arising out of his employment or arising from the failure of the employer to provide and maintain safe premises and suitable appliances; which said grounds of defense are hereby abolished.

3. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract, written or verbal, with a subcontractor to do all or any part of such work comprised in such contractor's contract with the employer, such contract or

subcontract shall not bar the liability of the employer under this act for injury caused to an employé of such contractor or subcontractor by any defect in the condition of the ways, works, machinery or plant if the defect arose or had not been discovered and remedied through the negligence of the employer or some one entrusted by him with the duty of seeing that they were in proper condition. This paragraph shall apply only to actions arising under section one.

4. The provisions of paragraphs one, two and three shall apply to any claim for the death of an employé arising under an act entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect or default," approved March third, eighteen hundred and forty-eight, and the amendments thereof and supplements thereto.

5. In all actions at law brought pursuant to § 1 of this act, the burden of proof to establish wilful negligence in the injured employé shall be upon the defendant.

6. No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, unless the same be approved in writing by the judge or justice presiding at the trial, or in case of settlement without trial, by the judge of the circuit court of the district in which such issue arose; *provided*, that if notice in writing be given the defendant of such claim for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided.

## SECTION II. ELECTIVE COMPENSATION

7. When employer and employé shall by agreement, either express or implied, as hereinafter provided, accept the provisions of § 2 of this act, compensation for personal injuries to or for the death of such employé by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in paragraph eleven, in all cases except when the injury or death is intentionally self-inflicted, or when intoxication is the natural and proximate cause of injury, and the burden of proof of such fact shall be upon the employer.

## New Jersey

8. Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in § 2 of this act, and an acceptance of all the provisions of § 2 of this act, and shall bind the employé himself and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer; and those conducting his business during bankruptcy or insolvency.

9. Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of § 2 of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of § 2 of this act are not intended to apply, then it shall be presumed that the parties have accepted the provisions of § 2 of this act and have agreed to be bound thereby. In the employment of minors, § 2 shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.

10. The contract for the operation of the provisions of § 2 of this act may be terminated by either party upon sixty days' notice in writing prior to any accident.

11. Following is the schedule of compensation:

(a) For injury producing temporary disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; *provided*, that if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks.

(b) For disability total in character and permanent in quality, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; *provided*, that if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred weeks.



(c) For disability partial in character but permanent in quality, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to wit:

For the loss of a thumb, fifty per centum of daily wages during sixty weeks.

For the loss of a first finger, commonly called index finger, fifty per centum of daily wages during thirty-five weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be for one-half of the periods of time above specified, and compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; *providing, however*, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of daily wages during one hundred and fifty weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred weeks.

For the loss of a foot, fifty per centum of daily wages during one hundred and twenty-five weeks.

## New Jersey

For the loss of a leg, fifty per centum of daily wages during one hundred and seventy-five weeks.

For the loss of an eye, fifty per centum of daily wages during one hundred weeks.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of clause (b).

In all other cases in this class, or where the usefulness of a member or any physical function, is permanently impaired, the compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. Should the employer and employé be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of paragraph twenty hereof.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as are stated in clause(a).

In case of the death of a person from any cause other than the accident, during the period of payments for permanent injury, the remaining payments shall be paid to his or her dependents, according to the provisions of paragraph twelve of this act, or, if no dependents, the remaining amount due, but not exceeding one hundred dollars, shall be paid in a lump sum to the proper person for funeral expenses.

12. In case of death compensation shall be computed, but not distributed, on the following basis:

(1) Actual dependents.

For one dependent, thirty-five per centum of wages.

For two dependents, forty per centum of wages.

For three dependents, forty-five per centum of wages.

For four dependents, fifty per centum of wages.

For five dependents, fifty-five per centum of wages.

For six or more dependents, sixty per centum of wages.

The term "dependents" shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or death, namely: husband, wife, parents, stepparents, grandparents, children, stepchildren, grandchildren, posthumous

children, illegitimate children, brothers, sisters, half brothers, half sisters. Legally adopted children shall, in every particular, be considered as natural children; *provided, however*, that dependency shall be presumed as to a widow who was living with her husband at the time of his decease, and children under the age of eighteen years; stepchildren and illegitimate children shall be presumed to be dependent when they were part of the decedent's household at the time of his death. Every provision of this act applying to one class shall be equally applicable to the other. Should any dependent of a deceased employé die during the period covered by such weekly payments, or should the widow of a deceased employé remarry during such period, the right of such dependent or of such widow to compensation under this section shall cease.

Compensation shall be computed upon the foregoing basis. Distribution shall be made among dependents, if more than one, according to the order of the judge of the court of common pleas, who shall, when applied to for that purpose, determine, upon the facts being presented to him, the proportion to be paid to or on behalf of each dependent according to the relative dependency. Payment on behalf of infants shall be made to the surviving parent, if any.

(2) No dependents.

Expenses of last sickness and burial, the cost of burial, however, not to exceed one hundred dollars.

In computing compensation to orphans or other children, only those under eighteen years of age shall be included, and only during the period in which they are under that age, at which time payment on account of such child shall cease; *provided, however*, that payments to such physically or mentally deficient children as are for such reason dependent shall continue during the full term of compensation payment.

The compensation in case of death shall be subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; *provided*, that if at the time of injury the employé receives wages of less than five dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during three hundred weeks.

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New Jersey

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Compensation under this schedule shall not apply to alien dependents not residents of the United States.

13. No compensation shall be allowed for the first two weeks after injury received, except as provided by paragraph fourteen, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in paragraph fifteen.

14. During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services and medicines, as and when needed, not to exceed fifty dollars in value, unless the employé refuses to allow them to be furnished by the employer.

14. (a) Compensation for all classes of injuries shall run consecutively and not concurrently, as follows: First two weeks, medical and hospital services and medicines, as provided in paragraph fourteen. After the first two weeks, compensation during temporary disability. Following both, either or none of the above, compensation consecutively for each permanent injury. Following any or all or none of the above, if death results from the accident, expenses of last sickness and burial. Following which compensation to dependents, if any. In no case shall the total number of weekly payments be more than four hundred.

15. Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employé, or some one on his behalf, or some of the dependents, or some one on their behalf, shall give notice thereof to the employer within fourteen days of the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety days, and if the employé, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed, unless, and then to

## New Jersey

the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Unless knowledge be obtained, or notice given, within ninety days after the occurrence of the injury, no compensation shall be allowed.

16. The notice referred to may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it through the mail to the employer at the last known residence or business place thereof within the State, and shall be substantially in the following form:

To (name of employer):

You are hereby notified that a personal injury was received by (name of employé injured), who was in your employ at (place) while engaged as (nature of employment), on or about the ( ) day of ( ), nineteen hundred and ( ), and that compensation will be claimed therefor.

Signed,

( ).

but no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employé, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. Notice served at the office of, or on the person who was the employé's immediate superior, shall be a compliance with this act.

17. After an injury, the employé, if so requested by his employer, must submit himself for examination at some reasonable time and place within the State, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employé requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect of the period of suspension.

18. In case of a dispute over, or failure to agree upon, a claim for compensation between employer and employé, or the dependents of the employé, either party may submit the claim, both as

to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the court of common pleas of such county as would have jurisdiction in a civil case, or where there is more than one judge of said court, then to either or any of said judges of such court, which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding.

19. In case of death, where no executor or administrator is qualified, the said judge shall, by order, direct payment to be made to such person as would be appointed administrator of the estate of such decedent upon like terms as to bond for the proper application of compensation payments as are required of administrators.

20. Procedure in case of dispute shall be as follows:

Either party may present a petition to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. This petition shall be verified by the oath or affirmation of the petitioner. Proceedings on behalf of an infant shall be instituted and executed by a guardian, and payment, if any, shall be made to such guardian.

Upon the presentation of such petition the same shall be filed with the clerk of the Court of Common Pleas, and the judge shall by order fix a time and place for the hearing thereof, not less than three weeks after the date of the filing of said petition. A copy of said petition and order shall be served as summons in a civil action and may be served within six days thereafter upon the adverse party. Within seven days after the service of such notice the adverse party shall file an answer to said petition, unless the court for good cause shall grant further time, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as re-

quired for a petition. Within thirty days after the final hearing the judge of the Court of Common Pleas shall file his determination.

At the time fixed for hearing or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the Common Pleas Court, and judgment shall be entered thereon in the same manner as in causes tried in the Court of Common Pleas, and shall contain a statement of facts as determined by said judge. The employer may once every month file receipt of payment, verified by affidavit that the receipts are accurate and true, with the clerk of the court, which shall be entered in satisfaction of the judgment to the extent of such payments. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services in the Common Pleas Court.

No agreement between the parties for a lesser sum than that which may be determined by the judge of the Court of Common Pleas to be due, shall operate as a bar to the determination of a controversy upon its merits, or to the award of a larger sum, if it shall be determined by the said judge that the amount agreed upon is less than the injured employé or his dependents are properly entitled to receive.

21. The compensation herein provided may be commuted by said Court of Common Pleas, at its present value when discounted at five per centum simple interest, upon application of either party, with due notice to the other, if it appear that such commutation will be for the best interest of the employé or the dependents of the deceased employé, or that it will avoid undue expense or undue hardship to either party, or that such employé or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the greater part of his business or assets.

In determining whether the commutation asked for will be for

## New Jersey

the best interest of the employé or the dependents of the deceased employé, or that it will avoid undue expense or undue hardship to either party, the judge of the Court of Common Pleas will constantly bear in mind that it is the intention of this act that the compensation payments are in lieu of wages, and are to be received by the injured employé or his dependents in the same manner in which wages are ordinarily paid. Therefore, commutation is a departure from the normal method of payment and is to be allowed only when it clearly appears that some unusual circumstances warrant such a departure. Commutation shall not be allowed for the purpose of enabling the injured employé, or the dependents of a deceased employé, to satisfy a debt, or to make payment to physicians, lawyers, or any other persons.

When any proceedings have been taken under the provisions of paragraph twenty or paragraph twenty-one of this act, the judge of the Court of Common Pleas shall, as a part of his determination and order, either for payment or for commutation of payment, settle and determine the amount of compensation to be paid by the injured employé or his dependents, on behalf of whom such proceedings are instituted, to his legal adviser or advisers, and it shall be unlawful for any lawyer, or other person acting in that behalf, to ask for, contract for or receive any larger sum than the amount so fixed; and in the order determining weekly payments; where no commutation is made, the judge shall also determine the amount to be paid per week from the compensation payment on account of the legal fee thus awarded, and it shall be unlawful for the legal adviser, or other person acting in that behalf, to ask for, contract for or receive a larger sum per week than the allowance thus determined. Violation of the restrictions contained in this clause shall constitute contempt of court and shall be punished accordingly.

An agreement or award of compensation may be modified at any time by a subsequent agreement, or at any time after one year from the time when the same became operative, it may be reviewed upon the application of either party on the ground that the incapacity of the injured employé has subsequently increased or diminished. In such case the provisions of paragraph seventeen with reference to medical examination shall apply.

21. (a) At any time after the entry of the award, a sum equal



to all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer to any savings bank, trust company or life insurance company in good standing and authorized to do business in this State and having an office in the county in which the award was entered, and such sum, together with all interest thereon, shall thereafter be held in trust for the employé or the dependents of the employé, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee noted upon the docket of the clerk of the court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same times as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the employé or the dependents of the deceased employé. The expense of administration of such trust shall be fixed by the court and paid by the employer.

22. The right of compensation granted by this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid wages for labor. Claims or payments due under this act shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment.

### SECTION III. GENERAL PROVISIONS

23. For the purposes of this act, wilful negligence shall consist of (1) deliberate act or deliberate failure to act; or (2) such conduct as evidences reckless indifference to safety; or (3) intoxication. operating as the proximate cause of injury.

Wherever in this act the singular is used the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

Employer is declared to be synonymous with master and includes natural persons, partnerships and corporations; employé is synonymous with servant and includes all natural persons who perform service for another for financial consideration, exclusive of casual employments.

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New Jersey

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Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

No agreement, composition or release of damages made before the happening of any accident, except the agreement defined in § 2 of this act, shall be valid or shall bar a claim for damages for the injury resulting therefrom, and any such agreement, other than that defined in § 2 herein, is declared to be against the public policy of this State. The receipt of benefits from any association, society or fund to which the employé shall have been a contributor shall not bar the recovery of damages by action at law or the recovery of compensation under § 2 hereof.

Where a third person or corporation is liable to the employé or his dependents for an injury or death, the existence of a right of compensation from the employer under this statute shall not operate as a bar to the action of the employé or his dependents, nor be regarded as establishing a measure of damage therein. However, in event that the employé or his dependents shall recover from the said third person or corporation, a sum equivalent to or greater than the total compensation payments for which the employer is liable under this statute, the employer shall be released thereby from the obligation of compensation. If, however, the sum so recovered from the third person or corporation is less than the total of compensation payments, the employer shall be liable only for the difference. The obligation of the employer under this statute to make compensation shall continue until the payment, if any, by such third person or corporation is made. Such employer shall file with the third person or corporation so liable, at any time prior to payment, a statement of the compensation agreement or award between himself and his employé, or the dependents of the employé, and the employer shall thereafter be entitled to receive from such third person or corporation, upon the payment of any amount in release or in judgment by the third person or corporation on account of his or its liability to the injured employé or his dependents, a sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employé or his dependents, which payments shall be deducted by the third person or corporation from the sum paid

in release or judgment to the injured employé or his dependents.

Wherever in § 2 of this act the term "wages" is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, and shall not include gratuities received from the employer or others, nor shall it include board, lodging or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring. Where prior to the accident the rate of wages is fixed by the output of the employé, his weekly wages shall be taken to be six times his average daily earnings for a working day of ordinary length, excluding overtime. This rate of weekly wages shall be calculated by dividing the total value of the employé's output during the actual number of full working days during the preceding six months, by the number of days the workman was actually employed. All parts of this calculation shall refer to employment by the same employer.

In case of personal injuries or death all claims for compensation on account thereof shall be forever barred unless within one year after the accident the parties shall have agreed upon the compensation payable under this act, or unless within one year after the accident one of the parties shall have filed a petition for adjudication of compensation as provided herein.

24. In case for any reason any paragraph or any provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that §§ 1 and 2 are hereby declared to be inseparable, and if either section be declared void or inoperative in an essential part, so that the whole of such section must fall, the other section shall fall with it and not stand alone. Section 1 of this act shall not apply in cases where § 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension of the common law.

25. Every right of action for negligence, or to recover damages for injuries resulting in death, existing before this act shall take effect, is continued, and nothing in this act contained shall be construed as affecting any such right of action, nor shall the fail-

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New Jersey

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ure to give the notice provided for in § 2, paragraph fifteen of this act, be a bar to the maintenance of a suit upon any right of action existing before this act shall take effect.

26. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

27. This act shall take effect on the fourth day of July next succeeding its passage and approval.

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CHAPTER 177, LAWS OF 1913

AN ACT to amend an act entitled "An act creating the Employers' Liability Commission and prescribing its powers and duties, and requiring reports to be made by the employers of labor upon the operations of the employers' liability law for the information of said commission," approved April twenty-seventh, nineteen hundred and eleven.

*Be it enacted by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of the act to which this is an amendment is hereby amended so as to read as follows:

1. The Governor is hereby authorized to appoint six citizens of this State, at least two of whom shall be representatives of organized labor, as an Employers' Liability Commission, who shall hold their office for the term of two years and until their successors are appointed and qualified. They shall receive no compensation for their services, but their actual traveling expenses incurred upon the business of the commission shall be paid by the State Treasurer, upon warrants approved by the president of the said commission. The commission shall have power to choose one of their number as president and to call upon the Department of Labor for such clerical assistants as it may require in the performance of its duties, which department shall perform all clerical and statistical work heretofore performed by the commission. The expenses of the commission shall be paid from appropriations made for that purpose in any annual or supplemental appropriation bill. It shall be the duty of the commission to observe in detail, so far as possible, the operations throughout the State of the recent act of the Legislature commonly known as "The Em-

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New Jersey

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ployers' Liability Act," entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

2. This act shall take effect immediately.

Approved by Governor April 1, 1913.

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## CHAPTER 368, LAWS OF 1911

A Supplement to an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

*Be it enacted by the Senate and General Assembly of the State of New Jersey:*

1. Every contract of hiring, verbal, written or implied from circumstances, now in operation or made or implied prior to the time limited for the act to which this act is a supplement to take effect, shall, after this act takes effect, be presumed to continue subject to the provisions of § 2 of the act to which this act is a supplement, unless either party shall, prior to accident, in writing, notify the other party to such contract that the provisions of § 2 of the act to which this act is a supplement are not intended to apply.

2. This act shall take effect on the fourth day of July next succeeding its passage and approval.

Approved May 2, 1911.

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## CHAPTER 301, LAWS OF 1913

A Supplement to an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elec-

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New Jersey

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tive schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, nineteen hundred and eleven.

*Be it enacted by the Senate and General Assembly of the State of New Jersey:*

1. In any case where an infant or minor under the age of twenty-one years shall be entitled to receive a distributive share of or compensation by virtue of the provisions of the act to which this act is a supplement, any duly authorized guardian of the person and property of and for such infant or minor appointed by the surrogate or the Orphan's Court of the county in which said infant or minor resides shall be authorized and empowered to act for such infant or minor to the same extent as a duly appointed next friend or guardian ad litem appointed by any court of law of this State and any such guardian appointed by the surrogate or Orphan's Court shall have the right and authority to compromise and make composition in behalf of such infant or minor of any disputed claim for compensation arising under the provisions of the act to which this act is a supplement; *provided*, the terms of such compromise or composition shall be approved by an order of the Court of Common Pleas of the county wherein such infant or minor resides upon presentation of the facts and the terms thereof to said court, before the same shall become effective.

2. This act shall take effect immediately.

Approved April 9, 1913.

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## CHAPTER 145, LAWS OF 1913

A Further Supplement to an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

*Be it enacted by the Senate and General Assembly of the State of New Jersey:*

1. Every employé who shall be in the employ of the State, county, municipality or any board or commission, or any other governing body, including boards of education, within this State, shall be compensated under and by virtue of § 2 to which this act is a supplement; *provided, however*, that no person receiving a salary greater than twelve hundred dollars per year, nor any person holding an elective office shall be entitled to compensation; *and provided further*, that nothing herein continued shall be construed as affecting any pension fund now or hereafter provided by law.

2. When any payment shall be due under the provisions of this supplement or the act to which it is a supplement, the name of the injured employé, or in case of his death, the names of the persons to whom payment is to be made as his dependents, shall be carried upon the pay roll, and payment shall be made in the same manner and from the same source in which and from which the wages of the injured employé were paid. In event that any extraordinary payment larger than the weekly rate of compensation shall be due, such payment shall be made from any fund available for the maintenance or incidental expenses of the institution, department, board or governing body under and by which the employé was employed.

3. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved March 27, 1913.

## NEW YORK

(L. 1914, c. 41) *ch. 316 of 1914*

AN ACT in relation to assuring compensation for injuries or death of certain employees in the course of their employment and repealing certain sections of the labor law relating thereto, constituting chapter sixty-seven of the consolidated laws.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

### CHAPTER 67 OF THE CONSOLIDATED LAWS

#### WORKMEN'S COMPENSATION LAW

- ARTICLE 1. Short title, application, definitions. (§§ 1-3.)
2. Compensation. (§§ 10-34.)
  3. Security for compensation. (§§ 50-54.)
  4. State workmen's compensation commission. (§§ 60-76.)
  5. State insurance fund. (§§ 90-105.)
  6. Miscellaneous provisions. (§§ 110-119.)
  7. Laws repealed; when to take effect. (§§ 130-131.)

#### ARTICLE 1

##### SHORT TITLE; APPLICATION; DEFINITIONS

- SECTION 1. Short title.
2. Application.
  3. Definitions.

Section 1. *Short title.* This chapter shall be known as the "workmen's compensation law."

§ 2. *Application.* Compensation provided for in this chapter shall be payable for injuries sustained or death incurred by employees engaged in the following hazardous employments:



Group 1. The operation, including construction and repair, of railways operated by steam, electric or other motive power, street railways, and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway, including work of express, sleeping, parlor and dining car employees on railway trains.

Group 2. Construction and operation of railways not included in group one.

Group 3. The operation, including construction and repair, of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed or repaired by the company which owns or operates the railway.

Group 4. The operation, including construction and repair, of car shops, machine shops, steam and power plants, not included in group three.

Group 5. The operation, including construction and repair, of telephone lines and wires for the purposes of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 6. The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 7. Construction of telegraph and telephone lines not included in groups five and six.

Group 8. The operation, within or without the state, including repair, of vessels other than vessels of other states or countries used in interstate or foreign commerce, when operated or repaired by the company.

Group 9. Shipbuilding, including construction and repair in a ship-yard or elsewhere, not included in group eight.

Group 10. Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.

Group 11. Dredging, subaqueous or caisson construction, and pile driving.

Group 12. Construction, installation or operation of electric light and electric power lines, dynamos, or appliances, and power transmission lines.

Group 13. Paving; sewer and subway construction, work under compressed air, excavation, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables and wires, not included in other groups.

Group 14. Lumbering; logging, river-driving, rafting, booming, saw mills, shingle mills, lath mills; manufacture of veneer and of excelsior; manufacture of staves, spokes, or headings.

Group 15. Pulp and paper mills.

Group 16. Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware; upholstering; manufacture of mattresses or bed springs.

Group 17. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares or baskets.

Group 18. Mining; reduction of ores and smelting; preparation of metals or minerals.

Group 19. Quarries; sand, shale, clay or gravel pits, lime kilns; manufacture of brick, tile, terra-cotta, fire-proofing, or paving blocks, manufacture of calcium carbide, cement, asphalt or paving material.

Group 20. Manufacture of glass, glass products, glassware, porcelain or pottery.

Group 21. Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal.

Group 22. Operation and repair of stationary engines and boilers, not included in other groups.

Group 23. Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery,

instruments, photographic cameras and supplies, sheet metal products, buttons.

Group 24. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages.

Group 25. Manufacture of explosives and dangerous chemicals, corrosive acids or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, gun powder or ammunition.

Group 26. Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Group 27. Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water or soda waters.

Group 28. Manufacture of drugs and chemicals, not specified in group twenty-five, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations, fertilizers, including garbage disposal plants; shoe blacking or polish.

Group 29. Milling; manufacture of cereals or cattle foods, warehousing; storage; operation of grain elevators.

Group 30. Packing houses, abattoirs, manufacture or preparation of meats or meat products or glue.

Group 31. Tanneries.

Group 32. Manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose.

Group 33. Canning or preparation of fruit, vegetables, fish or food stuffs; pickle factories and sugar refineries.

Group 34. Bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices or condiments.

Group 35. Manufacture of tobacco, cigars, cigarettes or tobacco products.

Group 36. Manufacture of cordage, ropes, fibre, brooms or brushes; manilla or hemp products.

Group 37. Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy or felt.

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New York

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Group 38. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes.

Group 39. Power laundries; dyeing, cleaning or bleaching.

Group 40. Printing, photo-engraving, stereotyping, electrotyping, lithographing, embossing; manufacture of stationery, paper, cardboard boxes, bags, or wall-paper; and book-binding.

Group 41. The operation, otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons or other vehicles, and rollers and engines, propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules.

Group 42. Stone cutting or dressing; marble works; manufacture of artificial stone; steel building and bridge construction; installation of elevators, fire escapes, boilers, engines or heavy machinery; brick-laying, tile-laying, mason work, stone-setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, decorating or renovating; sheet metal work; roofing; construction, repair and demolition of buildings and bridges; plumbing, sanitary or heating engineering; installation and covering of pipes or boilers.

§ 3. *Definitions.* As used in this chapter, 1. "Hazardous employment" means a work or occupation described in section two of this chapter.

2. "Commission" means the state workmen's compensation commission, as constituted by this chapter.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, employing workmen in hazardous employments; including the state and a municipal corporation or other political subdivision thereof.

4. "Employee" means a person who is engaged in a hazardous employment in the service of an employer carrying on or conducting the same upon the premises or at the plant, or in the course of his employment away from the plant of his employer; and shall not include farm laborers or domestic servants.

5. "Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain.

6. "Compensation" means the money allowance payable to

an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

7. "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

8. "Death" when mentioned as a basis for the right to compensation means only death resulting from such injury.

9. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

10. "State fund" means the state insurance fund provided for in article five of this chapter.

11. "Child" shall include a posthumous child and a child legally adopted prior to the injury of the employee.

12. "Insurance carrier" shall include the state fund, stock corporations or mutual associations with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivision three of section fifty.

## ARTICLE 2

### COMPENSATION

#### SECTION 10. Liability for compensation.

11. Alternative remedy.
12. Compensation not allowed for first two weeks.
13. Treatment and care of injured employees.
14. Weekly wages basis of compensation.
15. Schedule in case of disability.
16. Death benefits.
17. Aliens.
18. Notice of injury.
19. Medical examination.
20. Determination of claims for compensation.
21. Presumptions.
22. Modification of award.

- SECTION 23. Appeals from the commission.
- 24. Costs and fees.
  - 25. Compensation, how payable.
  - 26. Enforcement of payment in default.
  - 27. Depositing future payments.
  - 28. Limitation of right to compensation.
  - 29. Subrogation to remedies of employee.
  - 30. Revenues or benefits from other sources not to affect compensation.
  - 31. Agreement for contribution by employee void.
  - 32. Waiver agreements void.
  - 33. Assignments; exemptions.
  - 34. Preferences.

§ 10. *Liability for compensation.* Every employer subject to the provisions of this chapter shall pay or provide as required by this chapter compensation according to the schedules of this article for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty. Where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty, neither the injured employee nor any dependent of such employee shall receive compensation under this chapter.

§ 11. *Alternative remedy.* The liability prescribed by the last preceding section shall be exclusive, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense

that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

§ 12. *Compensation not allowed for first two weeks.* No compensation shall be allowed for the first fourteen days of disability, except the benefits provided for in section thirteen of this chapter.

§ 13. *Treatment and care of injured employees.* The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus as may be required or be requested by the employee, during sixty days after the injury. If the employer fail to provide the same, the injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so. All fees and other charges for such treatment and services shall be subject to regulation by the commission as provided in section twenty-four of this chapter, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

§ 14. *Weekly wages basis of compensation.* Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation or death benefits, and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed;

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year

in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed;

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident;

4. The average weekly wages of an employee shall be one-fifty-second part of his average annual earnings;

5. If it be established that the injured employee was a minor when injured, and that under normal conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wages.

§ 15. *Schedule in case of disability.* The following schedule of compensation is hereby established:

1. *Total permanent disability.* In case of total disability adjudged to be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

2. *Temporary total disability.* In case of temporary total disability, sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three thousand five hundred dollars, except as otherwise provided in this chapter.

3. *Permanent partial disability.* In case of disability partial in character but permanent in quality the compensation shall be sixty-six and two-thirds per centum of the average weekly wages and shall be paid to the employee for the period named in the schedule as follows:

Thumb. For the loss of a thumb, sixty weeks.



First finger. For the loss of a first finger, commonly called index finger, forty-six weeks.

Second finger. For the loss of a second finger, thirty weeks.

Third finger. For the loss of a third finger, twenty-five weeks.

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

Phalange of thumb or finger. The loss of the first phalange of the thumb or finger shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount above specified. The loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great toe. For the loss of a great toe, thirty-eight weeks.

Other toes. For the loss of one of the toes other than the great toe sixteen weeks.

Phalange of toe. The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe, and the compensation shall be one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand. The loss of a hand, two hundred and forty-four weeks.

Arm. For the loss of an arm, three hundred and twelve weeks.

Foot. For the loss of a foot, two hundred and five weeks.

Leg. For the loss of a leg, two hundred and eighty-eight weeks.

Eye. For the loss of an eye, one hundred and twenty-eight weeks.

Loss of use. Permanent loss of the use of a hand, arm, foot, leg or eye shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye.

Amputations. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of the leg.

The compensation for the foregoing specific injuries shall be in

lieu of all other compensation, except the benefits provided in section thirteen of this chapter.

Other cases. In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest.

4. *Temporary partial disability.* In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise during the continuance of such partial disability, but not in excess of three thousand five hundred dollars, except as otherwise provided in this chapter.

5. *Limitation.* The compensation payment under subdivisions one, two and four and under subdivision three except in case of the loss of a hand, arm, foot, leg or eye, shall not exceed fifteen dollars per week nor be less than five dollars per week; the compensation payment under subdivision three in case of the loss of a hand, arm, foot, leg or eye, shall not exceed twenty dollars per week nor be less than five dollars a week; provided, however, that if the employee's wages at the time of injury are less than five dollars per week he shall receive his full weekly wages.

6. *Previous disability.* The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury.

§ 16. *Death benefits.* If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses, not exceeding one hundred dollars;

2. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each such child until of the age of eighteen years; in case of the subsequent death of such surviving wife (or dependent husband) any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages.

3. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband) then for the support of each such child until of the age of eighteen years, fifteen per centum of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

4. If the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until of the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, fifteen per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving wife (or dependent husband) or for the support of surviving child or children.

Any excess of wages over \$100 a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident.

§ 17. *Aliens.* Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amount as provided for residents, except that the commission may, at its option, or, upon the appli-

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New York

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cation of the insurance carrier, shall, commute all future installments of compensation to be paid to such aliens, by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission.

§ 18. *Notice of injury.* Notice of an injury for which compensation is payable under this chapter shall be given to the commission and to the employer within ten days after disability, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may be given by any person claiming to be entitled to compensation, or by some one in his behalf. The notice shall be in writing, and contain the name and address of the employee, and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf or, in case of death, by any one or more of his dependents, or by a person on their behalf. It shall be given to the commission by sending it by mail, by registered letter, addressed to the commission at its office. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership then such notice may be so given to any one of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process may be served, or any agent in charge of the business in the place where the injury occurred. The failure to give such notice, unless excused by the commission either on the ground that notice for some sufficient reason could not have been given, or on the ground that the state fund, insurance company, or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this chapter.

§ 19. *Medical examination.* An employee injured claiming or entitled to compensation under this chapter shall, if requested by the commission, submit himself for medical examination at a time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission. If the employee or the insurance carrier request he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination.

If an employee refuse to submit himself to examination, his right to prosecute any proceeding under this chapter shall be suspended, and no compensation shall be payable, for the period of such refusal.

§ 20. *Determination of claims for compensation.* At any time after the expiration of the first fourteen days of disability on the part of an injured employee, or at any time after his death, a claim for compensation may be presented to the commission. The commission shall have full power and authority to determine all questions in relation to the payment of claims for compensation under the provisions of this chapter. The commission shall make or cause to be made such investigation as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the commission, together with a statement of its conclusions of fact and rulings of law. The commission may, before making an award, require the claimant to appear before an arbitration committee appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the commission or a person specially deputed by the commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon. Immediately after such filing the commission shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the commission shall be final as to all questions of fact, and, except as provided in section twenty-three, as to all questions of law.

§ 21. *Presumptions.* In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary:

1. That the claim comes within the provisions of this chapter;
2. That sufficient notice thereof was given;
3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another;

4. That the injury did not result solely from the intoxication of the injured employee while on duty.

§ 22. *Modification of award.* Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the commission may at any time review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys already paid.

§ 23. *Appeals from the commission.* An award or decision of the commission shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless within thirty days after a copy of such award or decision has been sent to the parties, an appeal be taken to the appellate division of the supreme court of the third department. The commission may also, in its discretion, where the claim for compensation was not made against the state fund, on the application of either party, certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The commission shall be deemed a party to every such appeal, and the attorney-general, without extra compensation, shall represent the commission thereon. An appeal may also be taken to the court of appeals in all cases where such an appeal would lie from a decision of an appellate division, in the same manner and subject to the same limitations as is now provided in civil actions. Otherwise such appeals shall be subject to the law and practice applicable to appeals in civil actions. Upon the final determination of such an appeal, the commission shall make an award or decision in accordance therewith.

§ 24. *Costs and fees.* If the commission or the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this chapter, determines that such proceedings have not been so brought upon reasonable ground, it shall assess the whole cost of the proceeding upon the party who has so brought them. Claims for legal ser-

## New York

vices in connection with any claim arising under this chapter, and claims for services or treatment rendered or supplies furnished pursuant to section thirteen of this chapter, shall not be enforceable unless approved by the commission. If so approved, such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the commission.

§ 25. *Compensation, how payable.* Compensation under the provisions of this chapter shall be payable periodically, in accordance with the method of payment of the wages of the employee at the time of his injury or death, and shall be so provided for in any award; but the commission may determine that all payments or payments as to any particular group may be made monthly or at any other period, as it may deem advisable. The commission, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments, provided the same shall be in the interest of justice. If the award required payment of compensation otherwise than from the state fund all payments as required by the award shall be made directly to the commission or to a deputy specially authorized to receive the same, and disbursed in accordance with its award to the persons entitled thereto. And employers and insurance companies shall for such purpose be permitted, or when necessary to protect the interest of the beneficiary may be required, to make deposits to secure the prompt and convenient payment of such compensation.

§ 26. *Enforcement of payment in default.* If payment of compensation, or an installment thereof, due under the terms of an award, be not made within ten days after the same is due, by the employer or insurance corporation liable therefor, the amount of such payment shall constitute a liquidated claim for damages against such employer or insurance corporation, which with an added penalty of fifty per centum may be recovered in an action to be instituted by the commission in the name of the people of the state. If such default be made in the payment of an installment of compensation and the whole amount of such compensation be not due, the commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added penalty of

fifty per centum, as provided by this section. Any such action may be compromised by the commission or may be prosecuted to final judgment as, in the discretion of the commission, may best serve the interests of the persons entitled to receive the compensation or the benefits. Compensation recovered under this section shall be disbursed by the commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the state treasury, and be applicable to the expenses of the commission.

§ 27. *Depositing future payments.* If an award under this chapter requires payment of compensation by an employer or an insurance corporation in periodical payments, and the nature of the injury makes it possible to compute the present value of all future payments with due regard for life contingencies, the commission may, in its discretion, at any time, compute and permit or require to be paid into the state fund an amount equal to the present value of all unpaid compensation for which liability exists, in trust; and thereupon such employer or insurance corporation shall be discharged from any further liability under such award and payment of the same shall be assumed by the state fund.

§ 28. *Limitation of right to compensation.* The right to claim compensation under this chapter shall be forever barred unless within one year after the injury, or if death result therefrom, within one year after such death, a claim for compensation thereunder shall be filed with the commission.

§ 29. *Subrogation to remedies of employee.* If a workman entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured workman, or in case of death, his dependents, shall, before any suit or claim under this chapter, elect whether to take compensation under this chapter or to pursue his remedy against such other. Such election shall be evidenced in such manner as the commission may by rule or regulation prescribe. If he elect to take compensation under this chapter, the cause of action against such other shall be assigned to the state for the benefit of the state insurance fund, if compensation be payable therefrom, and otherwise to the person or association or corporation liable for the payment of such compensation, and if he elect to proceed against such other, the state insurance fund, person or association



or corporation, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this chapter for such case. Such a cause of action assigned to the state may be prosecuted or compromised by the commission. A compromise of any such cause of action by the workman or his dependents at an amount less than the compensation provided for by this chapter shall be made only with the written approval of the commission, if the deficiency of compensation would be payable from the state insurance fund, and otherwise with the written approval of the person, association or corporation liable to pay the same.

§ 30. *Revenues or benefits from other sources not to affect compensation.* No benefits, savings or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter, except that, in case of the death of an employee of the state, a municipal corporation or any other political subdivision of the state, any benefit payable under a pension system which is not sustained in whole or in part by the contributions of the employee, may be applied toward the payment of the death benefit provided by this chapter.

§ 31. *Agreement for contribution by employee void.* No agreement by an employee to pay any portion of the premium paid by his employer to the state insurance fund or to contribute to a benefit fund or department maintained by such employer or to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor.

§ 32. *Waiver agreements void.* No agreement by an employee to waive his right to compensation under this chapter shall be valid.

§ 33. *Assignments; exemptions.* Claims for compensation or benefits due under this chapter shall not be assigned, released or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees or their dependents.

§ 34. *Preferences.* The right of compensation granted by this chapter shall have the same preference or lien without limit of amount against the assets of the employer as is now or here-

after may be allowed by law for a claim for unpaid wages for labor.

## ARTICLE 3

## SECURITY FOR COMPENSATION

SECTION 50. Security for payment of compensation.

51. Posting of notice regarding compensation.

52. Effect of failure to secure compensation.

53. Release from all liability.

54. The insurance contract.

§ 50. *Security for payment of compensation.* An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state fund, or

2. By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in this state. If insurance be so effected in such a corporation or mutual association the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association together with a copy of the contract or policy of insurance.

3. By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission may, in its discretion, require the deposit with the commission of securities of the kind prescribed in section thirteen of the insurance law, in an amount to be determined by the commission, to secure his liability to pay the compensation provided in this chapter.

If an employer fail to comply with this section, he shall be liable to a penalty during which such failure continues an amount equal to the pro rata premium which would have been payable for insurance in the state fund for such period of non-compliance, to be recovered in an action brought by the commission.

The commission may, in its discretion, for good cause shown, remit any such penalty, provided the employer in default secure compensation as provided in this section.

§ 51. *Posting of notice regarding compensation.* Every em-

ployer who has complied with section fifty of this chapter shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the commission, stating the fact that he has complied with all the rules and regulations of the commission and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter.

§ 52. *Effect of failure to secure compensation.* Failure to secure the payment of compensation shall have the effect of enabling the injured employee or his dependents to maintain an action for damages in the courts, as prescribed by section eleven of this chapter.

§ 53. *Release from all liability.* An employer securing the payment of compensation by contributing premiums to the state fund shall thereby become relieved from all liability for personal injuries or death sustained by his employees, and the persons entitled to compensation under this chapter shall have recourse therefor only to the state fund and not to the employer. An employer shall not otherwise be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by himself or his insurance carrier.

§ 54. *The insurance contract.* 1. *Right of recourse to the insurance carrier.* Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this state shall contain a provision setting forth the right of the commission to enforce in the name of the people of the state of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. *Knowledge and jurisdiction of the employer extended to cover the insurance carrier.* Every such policy shall contain a pro-

## New York

vision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

3. *Insolvency of employer does not release the insurance carrier.* Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

4. *Limitation of indemnity agreements.* Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this chapter.

5. *Cancellation of insurance contracts.* No contract of insurance issued by a stock company or mutual association against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served.

## ARTICLE 4

## STATE WORKMEN'S COMPENSATION COMMISSION

## SECTION 60. State workmen's compensation commission.

61. Secretary, deputies and other employees.

62. Salaries and expenses.

63. Office.

64. Sessions of commission.

65. Powers of individual commissioners and deputy commissioners.

66. Powers and duties of secretary.

67. Rules.

68. Technical rules of evidence or procedure not required.

69. Issue of subpoena; penalty for failure to obey.

70. Recalcitrant witnesses punishable as for contempt.

71. Fees and mileage of witnesses.

72. Depositions.

73. Transcript of stenographer's minutes; effect as evidence.

74. Jurisdiction of commission to be continuing.

75. Report of commission.

76. Commission to furnish blank forms.

§ 60. *State workmen's compensation commission.* A state workmen's compensation commission is hereby created, consisting of five commissioners, to be appointed by the governor, by and with the advice and consent of the senate, one of whom shall be designated by the governor as chairman, not more than three of whom shall belong to the same political party. The commissioner of labor shall also be an ex officio member of the commission but shall not have a vote on orders, decisions or awards. Appointments may be made during the recess of the senate, but shall be subject to confirmation by the senate at the next ensuing session of the legislature. The term of office of appointive members of the commission shall be five years, except that the first members thereof shall be appointed for such terms that the term of one member shall expire on January first, nineteen hundred and sixteen, and on January first of every succeeding year. Successors shall be ap-

pointed in like manner for a full term of five years. Vacancies shall be filled in like manner by appointment for the unexpired term. Each appointive member of the commission shall before entering upon the duties of his office execute an official undertaking in the sum of fifty thousand dollars to be approved by the comptroller and filed in his office. The governor may remove any appointive commissioner for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges and an opportunity of being publicly heard in person or by counsel, upon not less than ten days' notice. If such a commissioner be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against him and a complete record of his proceedings and his findings thereon. Each appointive commissioner shall devote his entire time to the duties of his office, and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties as such commissioner, or serve on or under any committee of a political party. The commission shall have an official seal which shall be judicially noticed.

§ 61. *Secretary, deputies and other employees.* The commission may appoint one or more deputy commissioners and a secretary to hold office during its pleasure. It may also employ, during its pleasure, an actuary, accountants, medical doctors, clerks, stenographers, inspectors and other employees as may be needed to carry out the provisions of this chapter. The authority, duties and compensation of all subordinates and employees, except as provided by this chapter, shall be fixed by the commission.

§ 62. *Salaries and expenses.* The chairman of the commission shall receive an annual salary of ten thousand dollars, and each other commissioner, an annual salary of seven thousand dollars. The secretary shall receive an annual salary of five thousand dollars. The commissioners and their subordinates shall be entitled to their actual and necessary expenses while traveling on the business of the commission. The commission may also make the necessary expenditure to obtain statistical and other information to establish classifications of employments with respect to hazards and risks. The salaries and compensation of the subordinates and all other expenses of the commission, including the premiums to be paid by the state treasurer for the bond to be

furnished by him, shall be paid out of the state treasury upon vouchers signed by at least two commissioners.

§ 63. *Office.* The commission shall keep and maintain its principal office in the city of Albany, in rooms in the capitol assigned by the trustees of public buildings. The office shall be supplied with necessary office furniture, supplies, books, maps, stationery, telephone connections and other necessary appliances, at the expense of the state, payable in the same manner as other expenses of the commission.

§ 64. *Sessions of commission.* The commission shall be in continuous session and open for the transaction of business during all business hours of every day excepting Sundays and legal holidays. All sessions shall be open to the public and may be adjourned, upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay and expense prevented, the commission may hold sessions in cities other than the city of Albany. A party may appear before such commission and be heard in person or by attorney. Every vote and official act of the commission shall be entered of record, and the records shall contain a record of each case considered, and the award, decision or order made with respect thereto, and all voting shall be by the calling of each commissioner's name by the secretary and each vote shall be recorded as cast. A majority of the commission shall constitute a quorum. A vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the full commission so long as a majority remains.

§ 65. *Powers of individual commissioners and deputy commissioners.* Any investigation, inquiry or hearing which the commission is authorized to hold or undertake may be held or taken by or before any commissioner or deputy commissioner, and the award, decision or order of a commissioner or deputy commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the award, decision or order of the commission. Each commissioner and deputy shall, for the purposes of this chapter, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. The commission may authorize any deputy to conduct any such investigation, inquiry

or hearing, in which case he shall have the power of a commissioner in respect thereof.

§ 66. *Powers and duties of secretary.* The secretary of the commission shall:

1. Maintain a full and true record of all proceedings of the commission, of all documents or papers ordered filed by the commission, of decisions or orders made by a commissioner or deputy commissioner, and of all decisions or orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office;

2. Have power to administer oaths in all parts of the state, so far as the exercise of such power is properly incident to the performance of his duty or that of the commission;

3. Designate, from time to time, with the approval of the commission, one of the clerks appointed by the commission to exercise the powers and duties of the secretary during his absence;

4. Under the direction of the commission, have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe.

§ 67. *Rules.* The commission shall adopt reasonable rules, not inconsistent with this chapter, regulating and providing for

1. The kind and character of notices, and the service thereof, in case of accident and injury to employees;

2. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation;

3. The forms of application for those claiming to be entitled to compensation;

4. The method of making investigations, physical examinations and inspections;

5. The time within which adjudications and awards shall be made;

6. The conduct of hearings, investigations and inquiries;

7. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the attorney-general as to form and by the comptroller as to sufficiency;

8. Carrying into effect the provisions of this chapter;



9. The collection, maintenance and disbursement of the state insurance fund.

§ 68. *Technical rules of evidence or procedure not required.* The commission or a commissioner or deputy commissioner in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties.

§ 69. *Issue of subpoena; penalty for failure to obey.* A subpoena shall be signed and issued by a commissioner, a deputy commissioner or by the secretary of the commission and may be served by any person of full age in the same manner as a subpoena issued out of a court of record. If a person fail, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

§ 70. *Recalcitrant witnesses punishable as for contempt.* If a person in attendance before the commission or a commissioner or deputy commissioner refuses, without reasonable cause, to be examined, or to answer a legal and pertinent question or to produce a book or paper, when ordered so to do by the commission or a commissioner or deputy commissioner, the commission may apply to a justice of the supreme court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the supreme court, why he should not be committed to jail. Upon the return of such order the justice shall examine under oath such person and give him an opportunity to be heard; and if the justice determine that he has refused without reasonable cause or legal excuse to be examined or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, commit the offender to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law.

§ 71. *Fees and mileage of witnesses.* Each witness who appears

in obedience to a subpoena before the commission or a commissioner or deputy commissioner, or person employed by the commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the supreme court, which shall be audited and paid from the state treasury in the same manner as other expenses of the commission. A witness subpoenaed at the instance of a party other than the commission, a commissioner, deputy commissioner or person acting under the authority of the commission shall be entitled to fees or compensation from the state treasury, if the commission certify that his testimony was material to the matter investigated, but not otherwise.

§ 72. *Depositions.* The commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the supreme court.

§ 73. *Transcript of stenographer's minutes; effect as evidence.* A transcribed copy of the testimony, evidence and procedure or of a specific part thereof, or of the testimony of a particular witness or of a specific part thereof, on any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript thereof and to have been carefully compared by him with his original notes, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified, and a copy of such transcript shall be furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in the supreme court.

§ 74. *Jurisdiction of commission to be continuing.* The power and jurisdiction of the commission over each case shall be continuing, and it may, from time to time, make such modification or change with respect to former findings or orders relating thereto, as in its opinions may be just.

§ 75. *Report of commission.* Annually on or before the first day of February, the commission shall make a report to the legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the commission, the condition of the state insurance

fund, together with any other matter which the commission deems proper to report to the legislature, including any recommendations it may desire to make.

§ 76. *Commission to furnish blank forms.* The commission shall prepare and cause to be distributed so that the same may be readily available blank forms of application for compensation, notice to employers, proofs of injury or death, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

## ARTICLE 5

### STATE INSURANCE FUND

#### SECTION 90. Creation of state fund.

91. State treasurer custodian of fund.
92. Surplus and reserve.
93. Investment of surplus or reserve.
94. Administration expense.
95. Classification of risks and adjustment of premiums.
96. Associations for accident prevention.
97. Requirements in classifying employment and fixing and adjusting premium rates.
98. Time of payment of premiums.
99. Action for collection in case of default.
100. Withdrawal from fund.
101. Audit of payrolls.
102. Falsification of payroll.
103. Wilful misrepresentation.
104. Inspections.
105. Disclosures prohibited.

§ 90. *Creation of state fund.* There is hereby created a fund to be known as "The State Insurance Fund," for the purpose of insuring employers against liability under this chapter and of assuring to the persons entitled thereto the compensation provided by this chapter. Such fund shall consist of all premiums received and paid in to the fund, of property and securities acquired by and through the use of moneys belonging to the fund and of interest

earned upon moneys belonging to the fund and deposited or invested as herein provided. Such fund shall be administered by the commission without liability on the part of the state beyond the amount of such fund. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this chapter.

§ 91. *State treasurer custodian of fund.* The state treasurer shall be the custodian of the state insurance fund; and all disbursements therefrom shall be paid by him upon vouchers authorized by the commission and signed by any two members thereof. The state treasurer shall give a separate and additional bond in an amount to be fixed by the governor and with sureties approved by the state comptroller conditioned for the faithful performance of his duty as custodian of the state fund. The state treasurer may deposit any portion of the state fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. Interest earned by such portion of the state insurance fund deposited by the state treasurer shall be collected by him and placed to the credit of the fund.

§ 92. *Surplus and reserve.* Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the commission for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums, until such time as in the judgment of the commission such surplus shall be sufficiently large to cover the catastrophe hazard. The commission shall also set up and maintain a reserve adequate to meet anticipated losses and carry all claims and policies to maturity.

§ 93. *Investment of surplus or reserve.* The commission may, pursuant to a resolution of the commission approved by the comptroller, invest any of the surplus or reserve funds belonging to the state insurance fund in the same securities and investments authorized for investment by savings banks. All such securities or evidences of indebtedness shall be placed in the hands of the state treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all vouchers drawn on the state insurance fund for the making of such invest-

ments when signed by two members of the commission, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the commission authorizing the investment. The commission may, upon like resolution approved by the comptroller, sell any of such securities.

§ 94. *Administration expense.* The entire expense of administering the state insurance fund shall be paid in the first instance in the state, out of moneys appropriated therefor. In the month of January, nineteen hundred and eighteen, and annually thereafter in such month, the commission shall ascertain the just amount incurred by the commission during the preceding calendar year, in the administration of the state insurance fund exclusive of the expense for the examination, determination and payment of claims, and shall refund such amount to the state treasury. If there be employees of the commission other than the commissioners themselves and the secretary whose time is devoted partly to the general work of the commission and partly to the work of the state insurance fund, and in case there is other expense which is incurred jointly on behalf of the general work of the commission and the state insurance fund, an equitable apportionment of the expense shall be made for such purpose and the part thereof which is applicable to the state insurance fund shall be chargeable thereto. As soon as practicable after December thirty-one, nineteen hundred and seventeen, and annually thereafter, the commission shall calculate the total administrative expense incurred during the preceding calendar year in connection with the examination, determination and payment of claims and the percentage which this expense bore to the total compensation payments made during that year. The percentage so calculated and determined shall be assessed against the insurance carriers including the state fund as an addition to the payments required from them in the settlement of claims during the year immediately following, and the amounts so secured shall be transferred to the state treasury to reimburse it for this portion of the expense of administering this chapter.

§ 95. *Classification of risks and adjustment of premiums.* Employments coming under the provisions of this chapter shall be divided for the purposes of the state fund, into the groups set

forth in section two of this chapter. Separate accounts shall be kept of the amounts collected and expended in respect to each such group for convenience in determining equitable rates; but for the purpose of paying compensation the state fund shall be deemed one and indivisible. The commission shall have power to rearrange any of the groups set forth in section two by withdrawing any employment embraced in it and transferring it wholly or in part to any other group, and from such employments to set up new groups at its discretion. The commission shall determine the hazards of the different classes composing each group and fix the rates of premiums therefor based upon the total payroll and number of employees in each of such classes of employment at the lowest possible rate consistent with the maintenance of a solvent state insurance fund and the creation of a reasonable surplus and reserve; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk.

§ 96. *Associations for accident prevention.* The employers in any of the groups described in section two or established by the commission may with the approval of the commission form themselves into an association for accident prevention, and may make rules for that purpose. If the commission is of the opinion that an association so formed sufficiently represents the employers in such group, it may approve such rules, and when so approved and approved by the industrial board of the labor department they shall be binding on all employers in such group. If such an approved association appoint an inspector or expert for the purpose of accident prevention, the commission may at its discretion provide in whole or in part for the payment of the remuneration and expenses of such inspector or expert, such payment to be charged in the accounting to such group. Every such approved association may make recommendations to the commission concerning the fixing of premiums for classes of hazards, and for individual risks within such group.

§ 97. *Requirements in classifying employment and fixing and adjusting premium rates.* The following requirements shall be observed in classifying employments and fixing and adjusting premium rates:

1. The commission shall keep an accurate account of the money

paid in premiums by each of the several classes of employments or industries, and the disbursements on account of injuries and deaths of employees thereof, including the setting up of reserves adequate to meet anticipated losses and to carry the claims to maturity, and also, on account of the money received from each individual employer and the amount disbursed from the state insurance fund on account of injuries and death of the employees of such employer, including the reserves so set up;

2. On January first, nineteen hundred and fifteen, and every fifth year thereafter, and at such other times as the commission, in its discretion, may determine, a readjustment of the rate shall be made for each of the several groups of employment or industries and of each hazard class therein, which, in the judgment of the commission, shall have developed an average loss ratio, in accordance with the experience of the commission in the administration of the law as shown by the accounts kept as provided herein;

3. If any such accounting show an aggregate balance (deemed by the commission to be safely and properly divisible) remaining to the credit of any class of employment or industry, after the amount required shall have been credited to the surplus and reserve funds and after the payment of all awards for injury or death lawfully chargeable against the same, the commission may in its discretion credit to each individual member of such group, who shall have been a subscriber to the state insurance fund for a period of six months or more prior to the time of such readjustment, and whose premium or premiums exceed the amount of the disbursements from the fund on account of injuries or death of his employees during such period, on the instalment or instalments of premiums next due from him such proportion of such balance as the amount of his prior paid premiums sustains to the whole amount of such premiums paid by the group to which he belongs since the last readjustment of rates;

4. If the amount of premiums collected from any employer at the beginning of any period of six months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payment as a basis, an adjustment of the amount of such premium shall be made at the end of such six months, and the actual amount of such premium shall be determined in accordance with the amount of the actual ex-

penditure of wages for such period; and, if such wage expenditure for such period is less than the amount on which such estimated premium was collected, such employer shall be entitled to receive a refund from the state insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments, at his option; and if such actual premium, when so ascertained, exceeds in amount a premium so paid by such employer at the beginning of such six months, such employer shall immediately upon being advised of the true amount of such premium due, forthwith pay to the treasurer of the state an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of such six months' period.

§ 98. *Time of payment of premiums.* Except as otherwise provided in this chapter, all premiums shall be paid by every employer into the state insurance fund on or before July first, nineteen hundred and fourteen, and semi-annually thereafter, or at such other time or times as may be prescribed by the commission. The commission shall mail a receipt for the same to the employer and place the same to the credit of the state insurance fund in the custody of the state treasurer.

§ 99. *Action for collection in case of default.* If an employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the people of the state of New York, and it shall be the duty of the commission on the first Monday of each month after July first, nineteen hundred and fourteen, to certify to the attorney-general of the state the names and residences, or places of business, of all employers known to the commission to be in default for such payment or payments for a longer period than five days and the amount due from such employer, and it shall then be the duty of the attorney-general forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due, and the same when collected, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this chapter requiring payments to be made to the state insurance fund shall date from the time of the payment of said



money so collected as aforesaid to the state treasurer for credit to the state insurance fund.

§ 100. *Withdrawal from fund.* Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, provided he is not in arrears for premiums due the fund and has given to the commission written notice of his intention to withdraw within thirty days before the expiration of the period for which he has elected to insure in the fund; provided that in case any employer so withdraws, his liability to assessments shall, notwithstanding such withdrawal, continue for one year after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal.

§ 101. *Audit of payrolls.* Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him, and shall furnish to the commission, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the commission shall require to verify the number of employees and the amount of the payroll.

§ 102. *Falsification of payroll.* An employer who shall wilfully misrepresent the amount of the payroll upon which the premiums chargeable by the state insurance fund is to be based shall be liable to the state in ten times the amount of the difference between the premiums paid and the amount the employer should have paid had his payroll been correctly computed; and the liability to the state under this section shall be enforced in a civil action in the name of the state insurance fund, and any amount so collected shall become a part of such fund.

§ 103. *Wilful misrepresentation.* Any person who wilfully misrepresents any fact in order to obtain insurance in the state insurance fund at less than the proper rate for such insurance, or in order to obtain payment out of such fund, shall be guilty of a misdemeanor.

§ 104. *Inspections.* The commission shall have the right to inspect the plants and establishments of employers insured in the state insurance fund; and the inspectors designated by the commission shall have free access to such premises during regular working hours.

§ 105. *Disclosures prohibited.* Information acquired by the commission or its officers or employees from employers or employees pursuant to this chapter shall not be opened to public inspection, and any officer or employee of the commission who, without authority of the commission or pursuant to its rules or as otherwise required by law shall disclose the same shall be guilty of a misdemeanor.

## ARTICLE 6

## MISCELLANEOUS PROVISIONS

SECTION 110. Penalties applicable to expense of commission.

111. Record and report of injuries by employers.

112. Information to be furnished by employer.

113. Inspection of records of employers.

114. Interstate commerce.

115. Penalties for false representations.

116. Limitation of time.

117. Duties of commissioner of labor.

118. Unconstitutional provisions.

119. Actions or causes of action pending.

§ 110. *Penalties applicable to expenses of commission.* All penalties imposed by this chapter shall be applicable to the expenses of the commission. When collected by the commission such penalties shall be paid into the state treasury and be thereafter appropriated by the legislature for the purposes prescribed by this section.

§ 111. *Record and report of injuries by employers.* Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing by the employer to the commission upon blanks to be procured from the commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the commission. An employer

who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars.

§ 112. *Information to be furnished by employer.* Every employer shall furnish the commission, upon request, any information required by it to carry out the provisions of this chapter. The commission, a commissioner, deputy commissioner, or any person deputed by the commission for that purpose, may examine under oath any employer, officer, agent or employé. An employer or an employé receiving from the commission a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commission within the period fixed by the commission therefor.

§ 113. *Inspection of records of employers.* All books, records and payrolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the commission or any of its authorized auditors, accountants or inspectors for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the uses and purposes of the commission in the administration of this chapter.

§ 114. *Interstate commerce.* The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that such employer and his employés working only in this state may, subject to the approval and in the manner provided by the commission and so far as not forbidden by any act of congress, accept and become bound by the provisions of this chapter in like manner and with the same effect in all respects as provided herein for other employers and their employés.

§ 115. *Penalties for false representation.* If for the purpose of

## New York

obtaining any benefit or payment under the provisions of this chapter, either for himself or any other person, any person wilfully makes a false statement or representation, he shall be guilty of a misdemeanor.

§ 116. *Limitation of time.* No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian or next friend.

§ 117. *Duties of commissioner of labor.* The commissioner of labor shall render to the commission any proper aid and assistance by the department of labor as in his judgment does not interfere with the proper conduct of such department.

§ 118. *Unconstitutional provisions.* If any section or provision of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 119. *Actions or causes of action pending.* This act shall not affect any action pending or cause of action existing or which accrued prior to July first, nineteen hundred and fourteen.

## ARTICLE 7

## LAWS REPEALED; WHEN TO TAKE EFFECT

SECTION 130. Laws repealed.

131. When to take effect.

§ 130. *Laws repealed.* Article fourteen-a and sections two hundred and fifteen to two hundred and nineteen-g, both inclusive, of chapter thirty-six of the laws of nineteen hundred and nine, as amended by chapter six hundred and seventy-four of the laws of nineteen hundred and ten, are hereby repealed.

§ 131. *When to take effect.* This chapter shall take effect immediately, provided that the application of this chapter as between employers and employes and the payment of compensation for injuries to employes or their dependents, in case of death, shall take effect July first, nineteen hundred and fourteen, but payments into the state insurance fund may be made prior to July first, nineteen hundred and fourteen.

Approved March 16, 1914.

## LAW AUTHORIZING MUTUAL COMPANIES

AN ACT to amend the insurance law, in relation to the creation of mutual companies to insure employers against loss, damage or compensation resulting from injuries suffered by employees or other persons for which the person insured is liable.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Chapter thirty-three of the laws nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting therein a new article to be article five-a, to read as follows:

## ARTICLE 5-A

MUTUAL EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION  
CORPORATIONS

## SECTION 185. Incorporation.

186. Completion of organization.

187. Directors and officers.

188. Meetings.

189. Assessments.

190. Dividends.

191. Reserves; suspension; cancellation and reinstatement of certificate.

192. Reports to and examination by superintendent.

193. Prevention of accidents.

194. Authorization of foreign mutual insurance corporations.

Section 185. Incorporation. Thirteen or more persons may become a corporation for the purpose of insuring on the mutual plan against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or the liability of the employer to pay compensation to his employees, or the compensation of employees under any workmen's compensation law, or against loss or damage caused by a truck, wagon or other vehicle propelled by steam, gas, gasoline,

electric, mechanical or other power or drawn by horses or mules, used in trade or manufacture and owned by any such person to the property of another for which loss or damage the person insured is liable, by making and filing in the office of the superintendent of insurance a certificate to be signed by each of them, stating their intention to form a corporation for the purpose named, and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation, the place where it is to be located, the mode and manner in which its corporate powers are to be exercised, the number of directors, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and post office addresses of the directors who will serve until the first annual meeting of such corporation, and such further particulars as may be necessary to explain and make manifest the objects and purposes of the corporation. Such certificate shall be proved or acknowledged and recorded in a book kept for that purpose by the superintendent of insurance and a certified copy thereof shall be delivered to the persons executing the same.

Section 186. Completion of organization. Upon receipt of a certified copy of the certificate of incorporation from the superintendent of insurance, the persons signing such certificate may open books to receive applications for membership therein. No such corporation shall transact any business of insurance unless and until at least forty employers employing not less than twenty-five hundred employees have become members of such corporation and applied for and agreed to take insurance therein, covering the liability of such employers to their employees for accidents to or injuries suffered by such employee nor until the facts specified in this section have been certified under oath by at least three of the persons signing the original certificate, to the superintendent of insurance, and the superintendent of insurance has issued a license to such corporation authorizing such corporation to begin writing the insurance specified in this article. The superintendent of insurance must be satisfied that the membership list of the corporation is genuine, and that every member thereof will take the policies as agreed by him within thirty days of the granting of the license to the corporation by the superintendent of insurance to issue policies. If at any time the number of members falls below

forty or the number of employees who are employed by the members of the corporation, falls below twenty-five hundred, no further policies shall be issued by the corporation until other employers have made bona fide applications for insurance therein, who, together with the existing members, amount to not less than forty employers who employ not less than twenty-five hundred employees, and in the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings against such corporation under section sixty-three of this chapter to the same effect as if clause h of sub-division one of such section was specifically applicable to corporations organized under this article.

The members of the corporation shall be policyholders therein, and when any member ceases to be a policyholder he shall cease, at the same time, to be a member of the corporation. A corporation, partnership, association or joint-stock company may become a member of such insurance corporation and may authorize another person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member. Any person acting as employer in the capacity of a trustee may insure in such corporation and as such trustee may assume the liabilities and be entitled to the rights of a member, but shall not be personally liable upon such contract of insurance.

Such corporation may borrow money or assume liability in a sum sufficient to defray the reasonable expenses of its organization.

Section 187. Directors and officers. Any such corporation shall have not less than thirteen directors, and such officers as shall be provided in the certificate of incorporation or by the by-laws made by the members. The directors shall be elected annually by the votes of the members. All except two of the directors of the corporation elected after the organization of the corporation is completed and it is authorized to begin to issue insurance policies shall be members of the corporation. All the officers except the secretary, assistant secretary and the actuary must be members of the board of directors.

Section 188. Meetings; basis of right to vote. At all meetings of the members of the corporation each member shall have one vote

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New York

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and one additional vote for every five hundred employees or major fraction thereof, covered by the policy held by such member in the corporation, provided that no member shall have more than twenty votes. The number of votes of a member shall be determined by the average number of employees at work and covered by said member's policy in the corporation during the last six months from a date not less than ten days immediately prior to the date of any such meeting. Before any member shall be permitted to cast more than one vote at any meeting of members he shall file with the secretary an affidavit showing the average number of employees at work during the preceding six months covered by the employer's policy of insurance.

Section 189. Assessments. The corporation may in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to and in addition to the cash premium written in the policy. If the corporation is not possessed of cash funds above its unearned premium sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. All assessments shall be based upon present values of all future payments, and all proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the corporation and the contingent liability of the members thereof shall be available for the payment of any claim against the corporation.

Section 190. Dividends. The board of directors may, from time to time, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation and other policy obligations which may be payable on account of the injuries sustained and



expenses incurred. Any such corporation may hold cash assets in excess of its liabilities, but such excess shall be limited to one hundred per centum of its reserves for losses and expenses incurred, and may be used from time to time in payment of losses, dividends and expenses.

Section 191. Reserves; suspension; cancellation and reinstatement of certificate.\* Such corporation shall be required to maintain the same reserves for the protection of policyholders and employees who may have a right of action directly against such corporation as are required to be maintained by stock insurance corporations in relation to the same class of insurance, except that reserves for liability for insurance of compensation under the Workmen's Compensation Law shall be the same reserves as provided by the workmen's compensation commission for the state insurance fund pursuant to such chapter, and the superintendent of insurance may suspend or cancel the certificate issued by him authorizing said corporation to transact such insurance business at any time when in the judgment of the superintendent of insurance the reserves of said corporation are insufficient to insure and secure the payment of its policy obligations, and the superintendent of insurance may reinstate or renew said certificate whenever by assessment or otherwise said reserves have been increased to a sum sufficient in the judgment of the superintendent of insurance to insure and secure the payment of the policy obligations of such corporation.

Section 192. Reports to and examinations by superintendent of insurance. Every such corporation shall make reports to the superintendent of insurance at the same times and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

Section 193. Prevention of accidents. The board of directors shall make and enforce reasonable rules and regulations not in conflict with the laws of the state for the prevention of accidents to the employees on the premises of members, and for this purpose the

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New York

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inspectors of the corporation shall have free access to all such premises during regular working hours. The policy of any member neglecting to provide suitable safety appliances as provided by law or as required by the board of directors may be cancelled and terminated by the board of directors after giving to such member notice of cancellation ten days prior to its becoming effective.

Section 194. Authorization of foreign mutual insurance corporations. After January first, nineteen hundred and seventeen, the superintendent of insurance may in his discretion, issue a certificate of authority to a mutual corporation organized under the laws of another state to do such insurance in this state; provided that, in no event, shall authority be given to any such mutual corporation to do other kinds of business than those specified in this article. Such corporation shall be required to maintain the same reserves for the protection of members and employees as are required for domestic corporations authorized to transact the same kind of insurance.

Section 2. This act shall take effect immediately.

Approved December 23, 1913.

## OHIO

(As am'd to take effect January 1, 1914)<sup>1</sup>

The original Ohio Act was partially repealed by the Act of 1913, so that portions of the former Act became inoperative on Sept. 1, 1913, and other portions became inoperative on Jan. 1, 1914. Then a supplemental Act was passed and approved on March 18, 1913, changing the name of the State Liability Board of Awards to the Industrial Commission of Ohio. The sections of the act which remained in force after January 1, however, were not repealed nor were they amended so as to change the name in the body of the Act. The result is that the principal Act which became effective on January 1, still carries the name of the State Liability Board of Awards while the supplemental Act gives all the jurisdiction of the Board of Awards to the new Industrial Commission, together with other important duties. The Compensation Act proper is printed as amended to take effect January 1, 1914. The supplemental act immediately follows the compensation act proper.

There is some uncertainty as to when the Ohio law became effective. After the amendment of 1913 was passed a referendum petition was filed with the Secretary of State. That official refused to recognize the petition, on the ground that many of the

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<sup>1</sup> A somewhat confusing method of numbering the sections of a statute prevails in Ohio when the original Act has been amended and the amendment is incorporated in the original enactment. The bill which is subsequently enacted into a law necessarily has section numbers to which reference is made from one section to another. After the bill is passed and is approved by the Governor, new section numbers are added by the secretary of State. The old section numbers are necessarily retained to identify the sections intended by the cross references in the original Act. The same process is followed when the original law is amended. Thus § 1465-42 of the original statute was § 6 of the Act of 1911, while it becomes § 2 of the Act of 1913, as the original § 6 of the Act of 1911 is repealed. To avoid the confusion which this process otherwise might entail the year of the enactment is inserted immediately after the section number which each section received in the statute as enacted and before it was re-numbered.

## Ohio

signatures were fictitious and many others had been fraudulently secured. Those who had filed the referendum petition thereupon filed additional signatures, so as to amend the petition. The Secretary of State took the ground that there could be no amendment to a petition which did not exist and refused to recognize the petition even as amended. Mandamus proceedings were taken before the Supreme Court to compel the Secretary of State to order an election under the referendum petition. The matter in court was undecided at the time of the election in November, 1913, and still remains undecided at the time this work goes to press. The law of Ohio provides that if a referendum petition is properly filed the operation of the statute is deferred until the determination of the referendum petition at the succeeding election. If it should be held that the referendum petition was properly filed in this case it would be difficult to tell when the Ohio law becomes effective.

AN ACT to create a state insurance fund for the benefit of injured, and the dependents of killed employés, and to provide for the administration of such fund by a state liability board of awards.

*Be it enacted by the General Assembly of the State of Ohio.*

(1465-37) Section 1 (Act 1911). There is hereby created a state liability board of awards, to be composed of three members, not more than two of whom shall belong to the same political party, to be appointed by the governor, within thirty days after the passage of this act, one of which members shall be appointed for the term of two years, one member for four years and one member for six years, and thereafter as their terms expire the governor shall appoint one member for the term of six years. Vacancies shall be filled by appointment by the governor for the unexpired term.

Establishment of liability board of awards.

Appointment, term, vacancies.

(1465-38) Section 2 (Act 1911). Each member of the board shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duty as such member, or serve on or under any committee of any political party.

Entire time of members required.

## Ohio

(1465-39) Section 3 (Act 1911). Each member of the board shall receive an annual salary of five thousand dollars, payable in the same manner as salaries of state officers are paid.

Compensation.

(1465-40) Section 4 (Act 1911). The board shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the board shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling of each member's name by the secretary and each vote shall be recorded as cast.

Continuous session.

Record.

(1465-41) Section 5 (Act 1911). A majority of the board shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full board so long as a majority remains. Any investigations, inquiry or hearing which the board is authorized to hold, or undertake, may be held or undertaken by or before any one member of the board. All investigations, inquiries, hearings and decisions of the board, and every order made by a member thereof, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, shall be deemed to be the order of the board.

Quorum.

What constitutes an order.

(1465-41a) Section 1 (Act 1913). That in addition to the powers, duties and jurisdiction now conferred and imposed upon it by law, the state liability board of awards shall have and exercise the powers, duties and jurisdiction provided for in this act.

(1465-42) Section 2 (act 1913). The board shall keep and maintain its main office in the city of Columbus, and such branch office or offices in other cities of the state as it shall deem proper, and shall provide suitable rooms, necessary office furniture, supplies, books, periodicals and maps for the same. All necessary expenses shall be audited and paid out of the state treasury. It shall provide itself with a seal for the authentication of its orders,

## Ohio

awards and proceedings, upon which shall be inserted the words "STATE LIABILITY BOARD OF AWARDS—STATE OF OHIO—OFFICIAL SEAL."

The board may hold sessions at any place within the state.

(1465-43) Section 3 (Act 1913). The board may employ a secretary, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and fix their compensation. Such employment and compensation shall be first approved by the governor and shall be paid out of the state treasury. The members of the board, secretary, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers, and other assistants that may be employed shall be entitled to receive from the state treasury their actual and necessary expenses while traveling on the business of the board, and the members of the board may confer and meet with officers of other states and officers of the United States on any matters pertaining to their official duties. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the board.

(1465-44) Section 8 (Act 1911). The board shall adopt reasonable and proper rules to govern its procedure, Rules and regulations. regulate and provide for the kind and character of notices, and the services thereof, in cases of accident and injury to employes, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to benefits of compensation from the state insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

(1465-45) Section 4 (Act 1913). Every employer shall furnish the board, upon request, all information required by it to carry out the purposes of this act. In the month of January of each year, every employer of the state, employing five or more employes regularly in the same business, or in or about the same establishment, shall prepare and mail to the board, at its main office in the City of Columbus, Ohio, a statement containing the following information, viz.: the number of employes employed during the

preceding year from January 1 to December 31st inclusive; the number of such employ  s employed at each kind of employment; and, the aggregate amount of wages paid to such employ  s, which information shall be furnished on a blank or blanks to be prepared by the board; and it shall be the duty of the board to furnish such blanks to employers free of charge, upon request therefor. Every employer receiving from the board any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give to the board in writing good and sufficient reasons for such failure. The board may require that the information herein required to be furnished be verified under oath and returned to the board within the period fixed by it or by law. The board or any member thereof, or any person employed by the board for that purpose, shall have the right to examine, under oath, any employer, or the officer, agent or employ   thereof for the purpose of ascertaining any information which such employer is required by this act to furnish to the board.

Any employer who shall fail or refuse to furnish to the board the annual statement herein required, or who shall fail or refuse to furnish such other information as may be required by the board under authority of this section, shall be liable to a penalty of five hundred dollars, to be collected in a civil action brought against said employer in the name of the state; all such penalties, when collected, shall be paid into the state insurance fund and become a part thereof.

(1465-46) Section 5 (Act 1913). The information contained in the annual report provided for in the preceding section, and such other information as may be furnished to the board by employers in pursuance of the provisions of said section, shall be for the exclusive use and information of said board in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the board is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the department, in statistical form, for the use and information of other state departments and the public. Any person in the employ of the board who shall divulge any information secured by him

Ohio

in respect to the transactions, property or business of any company, firm, corporation, person, association, co-partnership or public utility to any person other than the members of the board, while acting as an employé of the board, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall thereafter be disqualified from holding any appointment or employment with the board.

(1465-47) Section 11 (Act 1911). Each member of the board, the secretary and every inspector or examiner appointed by the board shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, Power to administer oath. take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

(1465-48) Section 12 (Act 1911). In case of disobedience of any person to comply with the order of the board, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the probate judge of the county in which the person resides, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from such court on a refusal to testify therein. Failure to comply with order or testify, is contempt.

(1465-49) Section 13 (Act 1911). Each officer who serves such subpoenas shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the board or an inspector or examiner, Officers' fees. shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the board. No witness subpoenaed at the instance of a party other than the board or an inspector shall be entitled to compensation from the state treasury unless the board shall certify that his testimony was material to the matter investigated.



(1465-50) Section 14 (Act 1911). In an investigation, the board may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by the law for like depositions in civil actions in the court of common pleas.

**Depositions.** (1465-51) Section 15 (Act 1911). A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the board, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the board with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of common pleas.

**Stenographer's copy received in evidence.** (1465-52) Section 16 (Act 1911). The board shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the state insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

**Blank forms furnished by board.** (1465-53) Section 6 (Act 1913). The state liability board of awards shall classify occupations with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll and number of employes in each of said classes of occupation sufficiently large to provide an adequate fund for the compensation provided for in this act, and to maintain a state insurance fund from year to year.

(1465-54) Section 7 (Act 1913). It shall be the duty of the state liability board of awards, in the exercise of the powers and discretion conferred upon it in the preceding section, ultimately

## Ohio

to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death that it may authorize to be paid from the state insurance fund for the benefit of injured and the dependents of killed employ  s; and, in order that said object may be accomplished, the board shall observe the following requirements in classifying occupations and fixing the rates of premium for the risks of the same:

1. It shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the disbursements on account of injuries and death of employ  s thereof, and it shall also keep an account of the money received from each individual employer and the amount disbursed from the state insurance fund on account of injuries and death of the employ  s of such employer.

2. Ten per cent of the money that has heretofore been paid into the state insurance fund and ten per cent of all that may hereafter be paid into such fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars (\$100,000.00) after which time the sum of five per cent of all the money paid into the state insurance fund shall be credited to such surplus fund, until such time as, in the judgment of the board, such surplus shall be sufficiently large to guarantee a state insurance fund from year to year.

3. On the first day of July, 1914, and semi-annually thereafter, a readjustment of the rates shall be made for each of the several classes of occupation or industry which, in the judgment of the board, have developed an average loss ratio, in accordance with the experience of the board in the administration of the law as shown by the accounts kept as provided herein.

4. Should any such accounting show a balance remaining to the credit of any class of occupation or industry, after the above-mentioned amounts have been credited to the surplus fund and after the payment of all awards for injury or death lawfully chargeable against the same, the premium rate for such class shall be reduced; and, each individual member of such class, who has been a subscriber to the state insurance fund for a period

## Ohio

of six months or longer prior to the time of such readjustment, and whose premium or premiums so paid to the fund exceeds the amount of the disbursements from the fund on account of injuries or death to his employ es during such period, shall be entitled to a credit on the installment or installments of premium next due from him, the amount of which credit shall be such proportion of said balance as the amount of his prior paid premiums sustains to the whole amount of said premiums paid by the class to which he belongs since the last readjustment of rates.

(1465-55) Section 8 (Act 1913). The state liability board of awards shall adopt rules and regulations with respect to the collection, maintenance and disbursement of the state insurance fund; one of which rules shall provide that in the event the amount of premiums collected from any employer at the beginning of any period of six months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, that an adjustment of the amount of such premium shall be made at the end of such six months period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for said period; and, in the event such wage expenditure for said period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to receive a refunder from the state insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments at his option, and should such actual premium, when ascertained as aforesaid exceed in amount the premium so paid by such employer at the beginning of such six months' period, such employer shall immediately upon being advised of the true amount of such premium due, forthwith pay to the treasurer of state an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of said six months' period.

(1465-56) Section 9 (Act 1913). The treasurer of state shall be the custodian of the state insurance fund and all disbursements therefrom shall be paid by him upon vouchers authorized by the state liability board of awards and signed by any two members of

## Ohio

the board; or, such vouchers may bear the fac-simile signature of the board members printed thereon, and the signature of the chief of the auditing department.

(1465-57) Section 10 (Act 1913). The treasurer of state is hereby authorized to deposit any portion of the state insurance fund not needed for immediate use, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer; and all interest earned by such portion of the state insurance fund as may be deposited by the state treasurer in pursuance of authority herein given, shall be collected by him and placed to the credit of such fund.

(1465-58) Section 11 (Act 1913). The state liability board of awards shall have the power to invest any of the surplus or reserve belonging to the state insurance fund in bonds of the United States, the state of Ohio, or of any county, city, village or school district of the state of Ohio, at current market prices for such bonds; provided that such purchase be authorized by a resolution adopted by the board and approved by the governor; and it shall be the duty of the boards or officers of the several taxing districts of the state in the issuance and sale of bonds of their respective taxing districts, to offer in writing to the state liability board of awards, prior to advertising the same for sale, all such issues as may not have been taken by the trustees of the sinking fund of the taxing district so issuing such bonds; and said board shall, within ten days after the receipt of such written offer either accept the same and purchase such bonds or any portion thereof at par and accrued interest, or reject such offer in writing; and all such bonds so purchased forthwith shall be placed in the hands of the treasurer of state, who is hereby designated as custodian thereof, and it shall be his duty to collect the interest thereon as the same becomes due and payable, and also the principal thereof, and to pay the same, when so collected, into the state insurance fund. The treasurer of state shall honor and pay all vouchers drawn on the state insurance fund for the payment of such bonds when signed by any two members of the board, upon delivery of said bonds to him when there is attached to such voucher a certified copy of such resolution of the board authorizing the purchase of such bonds; and the board may sell any of said bonds upon like resolution, and the proceeds thereof shall be paid by the purchaser to

## Ohio

the treasurer of state upon delivery to him of said bonds by the treasurer.

(1465-59) Section 12 (Act 1913). The treasurer of state shall give a separate and additional bond in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the state insurance fund.

(1465-60) Section 13 (Act 1913). The following shall constitute employers subject to the provisions of this act:

1. The state and each county, city, township, incorporated village and school district therein.

2. Every person, firm, and private corporation including any public service corporation that has in service five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express, or implied, oral or written.

(1465-61) Section 14 (Act 1913). The terms "employé," "workman" and "operative" as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to policemen or firemen in cities where policemen's and firemen's pension funds are now or hereafter may be established and maintained by municipal authority under existing laws.

2. Every person in the service of any person, firm or private corporation, including any public service corporation employing five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work for hire under the laws of the state, but not including any person whose employment is but casual, or not in the usual course of trade, business, profession or occupation of his employer.

(1465-62) Section 15 (Act 1913). Every employer mentioned in

## Ohio

sub-division one of section thirteen hereof, shall contribute to the state insurance fund in proportion to the annual expenditure of money by such employer for the service of persons described in sub-division one of section fourteen hereof, the amount of such payments and the method of making the same to be determined as hereinafter provided.

(1465-63) Section 16 (Act 1913). The amount of money to be contributed by the state itself, and by each county, city, incorporated village, school district or other taxing district of the state shall be, unless otherwise provided by law, a sum equal to one per centum of the amount of money expended by the state and for each county, city, incorporated village, school district or other taxing district respectively during the next preceding fiscal year for the service of persons described in sub-division one of section fourteen hereof.

(1465-64) Section 17 (Act 1913). In the month of January in the years 1914 and 1915, the auditor of state shall draw his warrant on the treasurer of state, in favor of said treasurer as custodian of the state insurance fund, and for deposit to the credit of said fund, for a sum equal to one per centum of the amount of money expended by the state during the last preceding fiscal year, for the service of persons described in sub-division one of section fourteen hereof, which said sums are hereby appropriated and made available for such payments; and thereafter in the month of January of each year, such sums of money shall in like manner be paid into the state insurance fund as may be provided by law; and it shall be the duty of the state liability board of awards to communicate to the general assembly on the first day of each regular session thereof, an estimate of the aggregate amount of money necessary to be contributed by the state during the two years next ensuing as its proper portion of the state insurance fund.

(1465-65) Section 18 (Act 1913). In the month of December of each year, the auditor of state shall prepare a list for each county of the state, showing the amount of money expended by each township, city, village, school district or other taxing district therein for the service of persons described in sub-division one of section fourteen hereof, during the fiscal year last preceding the time of preparing such lists; and shall file a copy of each such list with the auditor of the county for which such list was made, and copies

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Ohio

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of all such lists with the treasurer of state. Such lists shall also show the amount of money due from the county itself, and from each city, township, village, school district and other taxing district thereof, as its proper contribution to the state insurance fund, and the aggregate sum due from the county and such taxing districts located therein.

(1465-66) Section 19 (Act 1913). In January of each year following the filing with him of the lists mentioned in the last preceding section hereof, beginning with January, 1914, the auditor of each county shall issue his warrant in favor of the treasurer of state of Ohio on the county treasurer of his county, for the aggregate amount due from such county and from the taxing districts therein, to the state insurance fund, and the county treasurer shall pay the amount called for by such warrant from the county treasury, and the county auditor shall charge the amount so paid to the county itself and the several taxing districts therein as shown by such lists; and the treasurer of state shall immediately upon receiving such money, convert the same into the state insurance fund.

(1465-67) Section 20 (Act 1913). In February of each year the treasurer of state shall certify to the state liability board of awards the amount of money that has been paid to him for credit to the state insurance fund as provided in the foregoing sections and the amount paid by the state itself and by each county, city, incorporated village or school district therein, and at the same time shall certify to the board the names of such as may have made default in the payments hereinbefore provided and the respective amounts for which they are in default. When any default is made in the payment of the sums hereinbefore required to be contributed to the state insurance fund, or when any official fails, neglects or refuses to perform any act or acts required to be performed by him with reference to the making of such payments, it shall be the duty of the state liability board of awards forthwith to institute the proper proceedings in court to compel such payment or payments to be made.

The state liability board of awards shall keep a separate account of the money paid into the state insurance fund by the state and its political sub-divisions as hereinbefore provided and the disbursements made therefrom on account of injuries to public employes.

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Ohio

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(1465-68) Section 21 (Act 1913). Every employé mentioned in sub-division one of section fourteen hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on or after January 1st, 1914, shall be paid such compensation out of the state insurance fund for loss sustained on account of such injury or death as is provided in the case of other injured or killed employés, and shall be entitled to receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses as are payable in the case of other injured or killed employés.

Every employé mentioned in sub-division two of section fourteen hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1st, 1914, shall be entitled to receive, either directly from his employer as provided in section twenty-two hereof, or from the state insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses in case of death as is provided by sections thirty-two to forty inclusive of the act.

(1465-69) Section 22 (Act 1913). Except as hereinafter provided, every employer mentioned in sub-division two of section thirteen hereof shall, in the month of January, 1914, and semi-annually thereafter, pay into the state insurance fund the amount of premium determined and fixed by the state liability board of awards for the employment or occupation of such employer the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by the board; and such employer shall semi-annually thereafter pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of the board, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the state liability board of awards, which receipt or certificate, attested by the seal of the board shall be prima facie evidence of the payment of such premium.

Provided, however, that as to all employers who are subscribers



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Ohio

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to the state insurance fund at the time of the taking effect of this act, or who may before January 1st, 1914 elect to become subscribers thereto, the foregoing provisions for the payment of such premiums in the month of January, 1914, and semi-annually thereafter shall not apply, but such subsequent semi-annual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. And provided further, that such employers who will abide by the rules of the state liability board of awards and as may be of sufficient financial ability or credit to render certain the payment of compensation to injured employes or to the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in this act, or such employers as maintain benefit funds or departments or jointly with other employers maintain mutual associations of such said financial ability or credit, to which their employes are not required or permitted directly or indirectly to contribute, providing for the payment of such compensation and the furnishing of such medical, surgical, nursing and hospital services and attention and funeral expenses, may, upon a finding of such facts by the state liability board of awards elect to pay individually or from such benefit fund department or association such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; and the state liability board of awards may require such security or bond from said employers as it may deem proper, adequate and sufficient to compel, or secure to such injured employes, or to the dependents of such employes as may be killed, the payment of the compensation and expenses herein provided for, which shall in no event be less than that paid or furnished out of the state insurance fund, in similar cases, to injured employes or to the dependents of killed employes, whose employers contribute to said fund; and said board shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify such finding of facts by the board as to permit such election by such employers, which rules and regulations shall be general in their applications, one of which

## Ohio

rules shall provide that all employers electing directly to compensate their injured and the dependents of their killed employes as hereinbefore provided, shall pay into the state insurance fund such amount or amounts as are required to be credited to the surplus in paragraph two of section seven hereof.

The state liability board of awards may at any time change or modify its finding of facts herein provided for, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of this act in reference to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured and the dependents of killed employes.

(1465-70) Section 23 (Act 1913). Employers who comply with the provisions of the last preceding section shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injury or death of any employe, wherever occurring, during the period covered by such premium so paid into the state insurance funds, or during the interval of time in which such employer is permitted to pay such compensation direct to his injured or the dependents of his killed employes as herein provided.

(1465-71) Section 24 (Act 1913). Any employer who employs less than five workmen or operatives regularly in the same business, or in or about the same establishment, who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employes, wherever occurring, during the period covered by such premiums, provided the injured employe has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice shall be deemed a waiver by the employe of his right of action as aforesaid.

Each such employer paying the premiums provided by this act into the state insurance fund, or electing directly to pay compensation to his injured, or the dependents of his killed employes as provided in section twenty-two hereof, shall post in conspicuous places about his place or places of business typewritten or

## Ohio

printed notices stating the fact that he has made such payment, or that he has complied with the provisions of said section twenty-two hereof and all of the rules and regulations of the state liability board of awards made in pursuance thereof, and has been authorized by said board directly to compensate such said employés or dependents; and the same, when so posted, shall constitute sufficient notice to his employés of the fact that he has made such payment, or that he has complied with such elective provision of section twenty-two; and of any subsequent payments he may make after such notices have been posted.

(1465-72) Section 25 (Act 1913). The state liability board of awards shall disburse the state insurance fund to such employés of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wheresoever such injuries have occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued. All employers electing directly to compensate their injured employés, in compliance with this act, shall pay to such injured employés, or to the dependents of employés who have been killed in the course of their employment, unless such injury or death of such employé has been purposely self-inflicted, the compensation, and shall furnish such medical, surgical, nurse and hospital care and attention or funeral expenses as would have been paid and furnished by virtue of this act under a similar state of facts, by the state liability board of awards out of the state insurance fund, in case said employer had paid the premium provided by this act, into said fund.

Provided, however, that if any rule or regulation of such employer so directly compensating his employés, shall provide for or authorize the payment of greater compensation or more complete or extended medical care, nursing, surgical and hospital attention or funeral expenses to such injured employés, or to the dependents of such employés as may be killed, such employer shall be required to pay to such employés, or to the dependents of such as are killed, the amount of compensation and furnish such medical care, nursing, surgical and hospital attention or funeral expenses provided by his said rules and regulations.

And such payment or payments to such injured employés, or to their dependents in case death has ensued, shall be in lieu of

## Ohio

any and all rights of action whatsoever against the employer of such injured or killed employés.

(1465-73) Section 26 (Act 1913). Employers mentioned in subdivision two of section thirteen hereof, who shall fail to comply with the provisions of section twenty-two hereof, shall not be entitled to the benefits of this act during the period of such non-compliance, but shall be liable to their employés for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employés, and also to the personal representatives of such employés where death results from such injuries, and in such action the defendant shall not avail himself or itself of the following common law defenses:

The defense of the fellow-servant rule, the defense of the assumption of risk or the defense of contributory negligence.

And such employers shall also be subject to the provisions of the two sections next succeeding.

(1465-74) Section 27 (Act 1913). Any employé whose employer has failed to comply with the provisions of section twenty-two hereof, who has been injured in the course of his employment, wheresoever such injury has occurred, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceeding against his employer by civil action in the courts, as provided in the last preceding section, file his application with the state liability board of awards for compensation in accordance with the terms of this act, and the board shall hear and determine such application for compensation in like manner as in other claims before the board; and the amount of the compensation which said board may ascertain and determine to be due to such injured employé, or to his dependents in case death has ensued, shall be paid by such employer to the person entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the board; and in the event of the failure, neglect or refusal of the employer to pay such compensation to the person entitled thereto, within said period of ten days, the same shall constitute a liquidated claim for damages against such employer in the amount so ascertained and fixed by the board, which with an added penalty of fifty

## Ohio

percentum, may be recovered in an action in the name of the state for the benefit of the person or persons entitled to the same. And any employé whose employer has elected to pay compensation to his injured, or to the dependents of his killed employés in accordance with the provisions of section twenty-two hereof, may, in the event of the failure of his employer to so pay such compensation or furnish such medical, surgical, nursing and hospital services and attention or funeral expenses, file his application with the state liability board of awards for the purpose of having the amount of such compensation and such medical, surgical, nursing and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the board and with like effect as hereinbefore provided.

And the state liability board of awards shall adopt and publish rules and regulations governing the procedure before the board provided in this section, and shall prescribe forms of notices and the mode and manner of serving the same in all claims for compensation arising under this section. Any suit, action or proceeding brought against any employer under the provisions of this section, may be compromised by the board, or such suit, action or proceeding may be prosecuted to final judgment as in the discretion of the board may best subserve the interest of the persons entitled to receive such compensation.

(1465-75) Section 28 (Act 1913). If any employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the state as plaintiff; and it shall be the duty of the state liability board of awards on the first Monday in February, 1914, and on the first Monday of each month thereafter, to certify to the attorney general of the state the names and residences of all employers known to the board to be in default for such payments for a longer period than five days, and the amount due from each such employer, and it shall then be the duty of the attorney general forthwith to bring, or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due, and the same when collected, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this act requiring payments to be made to the state insurance fund shall date from the time of the payment

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Ohio

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of said money so collected as aforesaid to the Treasurer of State for credit to the state insurance fund.

(1465-76) Section 29 (Act 1913). But where a personal injury is suffered by an employé, or where death results to an employé from personal injury while in the employ of an employer in the course of employment, and such employer has paid into the state insurance fund the premium provided for in this act, or is authorized directly to compensate such employé or dependents by virtue of compliance with section twenty-two of this act, and in case such injury has arisen from the wilful act of such employer, or any of such employer's officers or agents, or from the failure of such employer or any of such employer's officers or agents to comply with any lawful requirement for the protection of the lives and safety of employés, then in such event, nothing in this act contained shall affect the civil liability of such employer, but such injured employé, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury; and such employer shall not be liable for any injury to any employé or his legal representative in case death results, except as provided in this section; and in all actions authorized by this section the defendant shall be entitled to plead the defense of contributory negligence and the defense of the fellow-servant rule; and, in all cases determined in court as authorized by this section when a judgment is awarded the plaintiff, the court shall determine, fix and award the amount of fee or fees to be paid plaintiff's attorney or attorneys, any contract to the contrary notwithstanding.

Every employé, or his legal representative in case death results, who makes application for an award, or accepts compensation from an employer who elects, under section twenty-two of this act, directly to pay such compensation, waives his right to exercise his option to institute proceedings in any court, except as provided in section forty-three hereof. Every employé, or his legal representative in case death results, who exercises his option to institute proceedings in court as provided in this section, waives his right to any award, or direct payment of compensation from his employer under section twenty-two hereof, as provided in this act.

The term "wilful act," as employed in this section, shall be

construed to mean an act done knowingly and purposely with the direct object of injuring another. (*Last paragraph added in 1914.*)

(1465-77) Section 30 (Act 1913). All judgments obtained in any action prosecuted by the board or by the state under the authority of this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law on judgments rendered for claims for taxes.

(1465-78) Section 31 (Act 1913). No compensation shall be allowed for the first week after the injury is received, except the disbursement hereinafter authorized for medical, nurse and hospital services and medicines, and for funeral expenses.

(1465-79) Section 32 (Act 1913). In case of temporary disability, the employé shall receive sixty-six and two-thirds per cent of his average weekly wages so long as such disability is total, not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week, unless the employé's wages shall be less than five dollars per week, in which event he shall receive compensation equal to his full wages; but in no case to continue for more than six years from the date of the injury, or to exceed three thousand, seven hundred and fifty dollars.

(1465-80) Section 33 (Act 1913). In case of injury resulting in partial disability, the employé shall receive sixty-six and two-thirds per cent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, or a greater sum in the aggregate than thirty-seven hundred and fifty dollars. In cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified herein, to-wit:

For the loss of a thumb,  $66\frac{2}{3}\%$  of the average weekly wages during sixty weeks.

For the loss of a first finger, commonly called index finger,  $66\frac{2}{3}\%$  of the average weekly wages during thirty-five weeks.

For the loss of a second finger,  $66\frac{2}{3}\%$  of the average weekly wages during thirty weeks.

For the loss of a third finger,  $66\frac{2}{3}\%$  of the average weekly wages during twenty weeks.

For the loss of a fourth finger, commonly known as the little finger,  $66\frac{2}{3}\%$  of the average weekly wage during fifteen weeks.

## Ohio

The loss of the second, or distal phalange, of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third, or distal phalange, of any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of the middle, or second phalange, of any finger shall be considered to be equal to the loss of two-thirds of such finger.

The loss of more than the middle and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger; provided, however, that in no case will the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of palm) for the corresponding thumb, finger, or fingers as above, add ten weeks to the number of weeks as above.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes the fingers more than useless, the same number of weeks apply to such finger or fingers (not thumb) as given above.

For the loss of a hand,  $66\frac{2}{3}\%$  of the average weekly wages during one hundred and fifty weeks.

For the loss of an arm,  $66\frac{2}{3}\%$  of the average weekly wages during two hundred weeks.

For the loss of a great toe,  $66\frac{2}{3}\%$  of the average weekly wages during thirty weeks.

For the loss of one of the toes other than the great toe,  $66\frac{2}{3}\%$  of the average weekly wages during ten weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be no loss;

For the loss of a foot,  $66\frac{2}{3}\%$  of the average weekly wages during one hundred and twenty-five weeks.

For the loss of a leg,  $66\frac{2}{3}\%$  of the average weekly wages during one hundred and seventy-five weeks.

For the loss of an eye,  $66\frac{2}{3}\%$  of the average weekly wages during one hundred weeks.

The amounts specified in this clause are all subject to the lim-



itation as to the maximum weekly amount payable as hereinbefore specified in this section.

(1465-81) Section 34 (Act 1913). In case of permanent total disability, the award shall be sixty-six and two-thirds per cent of the average weekly wages, and shall continue until the death of such person so totally disabled, but not to exceed a maximum of twelve dollars per week and not less than a minimum of five dollars per week, unless the employé's average weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages.

The loss of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, shall prima facie constitute total and permanent disability, to be compensated according to the provisions of this section.

(1465-82) Section 35 (Act 1913). In case the injury causes death within the period of two years, the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the state insurance fund shall be limited to the expenses provided for in section forty-two hereof.

2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wages, and to continue for the remainder of the period between the date of the death, and six years after the date of the injury, and not to amount to more than a maximum of thirty-seven hundred and fifty dollars, nor less than a minimum of one thousand five hundred dollars.

3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wages, and continue for all or such portion of the period of six years after the date of the injury, as the board in each case may determine, and not to amount to more than a maximum of thirty-seven hundred and fifty dollars.

4. The following persons shall be presumed to be wholly dependent for support upon a deceased employé:

- (A). A wife upon a husband with whom she lives at the time of his death.

- (B). A child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) upon

## Ohio

the parent with whom he is living at the time of the death of such parent.

In all other cases, question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employé, but no person shall be considered as dependent unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister. The word "child" as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury.

(1465-83) Section 36 (Act 1913). The benefits in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents as may be determined by the board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the board deems it proper, and shall operate to discharge all other claims therefor. The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the board.

In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the board on behalf of herself and minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.

(1465-84) Section 37 (Act 1913). The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

(1465-85) Section 38 (Act 1913). If it is established that the injured employé was of such age and experience when injured as that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage.

(1465-86) Section 39 (Act 1913). The powers and jurisdiction of the board over each case shall be continuing, and it may from time to time make such modifications or change with respect to former findings or orders with respect thereto, as, in its opinion may be justified.

## Ohio

(1465-87) Section 40 (Act 1913). The board, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

(1465-88) Section 41 (Act 1913). Compensation before payment shall be exempt from all claims or creditors and from any attachment or execution, and shall be paid only to such employes or their dependents.

(1465-89) Section 42 (Act 1913). In addition to the compensation provided for herein, the board shall disburse and pay from the state insurance fund, such amounts for medical, nurse and hospital services and medicine as it may deem proper, not, however, in any instance, to exceed the sum of two hundred dollars; and, in case death ensues from the injury, reasonable funeral expenses shall be disbursed and paid from the fund in an amount not to exceed the sum of one hundred and fifty dollars, and the board shall have full power to adopt rules and regulations with respect to furnishing medical, nurse and hospital services and medicine to injured employes entitled thereto, and for the payment therefor.

(1465-90) Section 43 (Act 1913). The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final. Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant, within thirty (30) days after the notice of the final action of such board, may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liability board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal.

Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant, and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under

## Ohio

the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and if they determine the right in his favor, shall fix his compensation within the limits under the rules prescribed in this act; and any final judgment so obtained shall be paid by the state liability board of awards out of the state insurance fund in the same manner as such awards are paid by such board.

The cost of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party.

Either party shall have the right to prosecute error as in the ordinary civil cases.

(1465-91) Section 44 (Act 1913). Such board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided; but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

(1465-92) Section 45 (Act 1913). No provision of this act relating to the amount of compensation shall be considered by, or called to the attention of the jury on the trial of any action to recover damages as herein provided.

(1465-93) Section 46 (Act 1913). A minor working at an age legally permitted under the laws of this state, shall be deemed sui juris for the purposes of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman, but in the event of the award of a lump sum of compensation to such minor employé, such sum shall be paid only to the legally appointed guardian of such minor.

(1465-94) Section 47 (Act 1913). No agreement by an employé to waive his rights to compensation under this act shall be valid. No agreement by an employé to pay any portion of the premium paid by his employer into the state insurance fund shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employé entitled to the benefits of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars for each such offense.

(1465-95) Section 48 (Act 1913). Any employé claiming the

## Ohio

right to receive compensation under this act may be required by the board or its chief medical examiner, to submit himself for medical examination at any time and from time to time at a place reasonably convenient for such employé, and as may be provided by the rules of the board. If such employé refuses to submit to any such examination or obstructs the same, his right to have his claim for compensation considered, if his claim be pending before the board, or to receive any payments for compensation theretofore granted shall be suspended during the period of such refusal or obstruction.

(1465-96) Section 49 (Act 1913). All books, records and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the board or any of its traveling auditors, inspectors or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as may be necessary for the uses and purposes of the board in its administration of the law. Refusal on the part of any employer to submit his books, records and payrolls for the inspection of any member of the board or traveling auditor, inspector or assistant presenting written authority from the board, shall subject such employer to a penalty of one hundred dollars (\$100.00) for each such offense, to be collected by civil action in the name of the state, and paid into the state insurance fund to become a part thereof.

(1465-97) Section 50 (Act 1913). Any employer who misrepresents to the board the amount of payroll upon which the premium under this act is based, shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state, and all sums collected under this section shall be paid into the state insurance fund.

(1465-98) Section 51 (Act 1913). The provisions of this act shall apply to employers and their employés engaged in intrastate and also in interstate and foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be

## Ohio

clearly separable and distinguishable from interstate or foreign commerce, and then only when such employer and any of his workmen working only in this state, with the approval of the state liability board of awards, and so far as not forbidden by any act of congress, voluntarily accept the provisions of this act by filing written acceptances, which, when filed with and approved by the board, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms, during the period or periods for which the premiums herein provided have been paid. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

(1465-99) Section 52 (Act 1913). Every employer of the state shall keep a record of all injuries, fatal or otherwise, received by his employ  s in the course of their employment. Within a week after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the state liability board of awards upon blanks to be procured from the board for that purpose. Such report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employ  , and shall state the time, the nature and cause of injury and such other information as may be required by the board. Any employer who refuses or neglects to make any report required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) for such offense.

(1465-100) Section 53 (Act 1913). Upon the request of the board, the attorney general, or under his direction, the prosecuting attorney of any county shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this act, or for the recovery of any money due the state insurance fund, or any penalty herein provided for, arising within the county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the board or the members thereof in their official capacity.

(1465-101) Section 54 (Act 1913). All contracts or agreements entered into by any employer, the purpose of which is to indemnify him from loss or damage on account of the injury of such

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## Ohio

employé by accidental means or on account of the negligence of such employer or such employer's officer, agent or servant, shall be absolutely void, unless such contract or agreement shall specifically provide for the payment to such injured employé of such amounts for medical, nurse and hospital services and medicines, and such compensation as is provided by this act for injured employés; and in the event of death shall pay such amounts as are herein provided for funeral expenses and for compensation to the dependents of those partially dependent upon such employé; and no such contract shall agree, or be construed to agree, to indemnify such employer, other than hereinbefore designated, for any civil liability for which he may be liable on account of the injury to his employé by the wilful act of such employer, or any of such employer's officers or agents, or the failure of such employer, his officers or agents, to observe any lawful requirement for the safety of employés.

(1465-102) Section 55 (Act 1913). The board may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section six hereof. The salaries and compensation of the members of the board, of the secretary and all actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and all other expenses of the board herein authorized, including the premium to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers signed by two of the members of such board and presented to the auditor of state, who shall issue his warrant therefor as in other cases.

(1465-103) Section 56 (Act 1913). Annually on or before the 15th day of December, such board, under the oath of at least two of its members, shall make a report to the governor for the preceding fiscal year, which shall include a statement of the number of awards made by it, and a general statement of the causes of accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the expense fund, and the condition of its respective funds, together with any other matters which the board deems proper to call to the attention of the governor, including any recommendations it may have to make, and it shall be the duty of the board from time to time to

## Ohio

publish and distribute among employers and employés, such general information as to the business transacted by the department as in its judgment may be useful.

(1465-104) Section 57 (Act 1913). The board shall cause to be printed in proper form for distribution to the public its classifications, rates, rules, regulations and rules of procedure, and shall furnish the same to any person upon application therefor, and the fact that such classifications, rates, rules, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this act.

(1465-105) Section 58 (Act 1913). No injunction shall issue suspending or restraining any order, classification or rate adopted by the board, or any action of the auditor of state, treasurer of state, attorney general, or the auditor or treasurer of any county, required to be taken by them or any of them by any of the provisions of this act; but nothing herein shall affect any right or defense in any action brought by the board or the state in pursuance of authority contained in this act.

(1465-106) Section 59 (Act 1913). Should any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole or any part thereof other than the part so decided to be unconstitutional.

Section 60. That sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-58, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78 and 1465-79 of the General Code are hereby repealed; and sections 1465-57, 1465-59, 1465-60 and 1465-61 of the General Code are hereby repealed, such repeal to take effect on January 1st, 1914.

C. L. SWAIN,

*Speaker of the House of Representatives.*

HUGH L. NICHOLS,

*President of the Senate.*

Passed February 26, 1913.

Approved March 14, 1913.

JAMES M. COX, *Governor.*

Filed in the office of Secretary of State March 17, 1913.



## Ohio

The sectional numbers on the margin hereof are designated as provided by law.

TIMOTHY S. HOGAN, *Attorney General*.

## UNITED STATES OF AMERICA, OHIO

## OFFICE OF THE SECRETARY OF STATE

I, CHAS. H. GRAVES, Secretary of State of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original rolls now on file in this office, and in my official custody as Secretary of State, as required by the laws of the State of Ohio, of an act passed by the General Assembly of the State of Ohio, on the 26th day of February A. D. 1913, and approved by the Governor on the 14th day of March A. D. 1913.

[SEAL] IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, at Columbus, this 28th day of March A. D. 1913.

CHAS. H. GRAVES,  
*"Secretary of State."*

SECTION 40 (Act 1911). The expense of such board in carrying out the provisions of this act shall be paid until January 1, 1912, out of the general revenue of the state not otherwise appropriated. Such expense shall not exceed twenty-five thousand dollars in addition to the salaries of members of such board.

SECTION 41 (Act 1911). The expenses of such board in carrying out the provisions of this act shall be paid from January 1st, 1912, to January 1st, 1913, out of the general revenue fund of the state not otherwise appropriated. Such expense shall not exceed one hundred thousand dollars in addition to the salary of the members.

Expenses to be  
paid out of  
general revenue  
fund

The sectional  
numbers on  
the margin  
hereof are  
designated as  
provided by  
law.

## Ohio

## SUPPLEMENTAL ACT

(103 Ohio Laws, 95.)

AN ACT creating the industrial commission of Ohio, superseding the state liability board of awards, abolishing the departments of commissioner of labor statistics, chief inspector of mines, chief inspector of workshops and factories, chief examiner of steam engineers, board of boiler rules and state board of arbitration and conciliation, merging certain \* \* \* powers and duties of said departments in and transferring certain powers and duties of said departments to said industrial commission of Ohio, and granting such commission certain other powers, \* \* \* and repealing sections 872, 873, 874, 876, 877, 878, 879, 880, 881, 883, 884, 897, 898, 900, 902, 903, 908, 979, 981, 983, 984, 986, 987, 988, 993, 1001, 1028-4, 1038, 1039, 1042, 1043, 1044, 1046, 1058, 1058-6, 1058-9, 1058-13, 1058-14, 1058-15, 1058-27, 1059, 1060, 1061, 1062, 1078 of the General Code.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. There is hereby created the industrial commission of Ohio, to be composed of three members to be appointed by the governor within thirty days after *this act goes into effect*, one of the members of such commission shall be appointed for the term of two years, one member for four years, and one member for six years, and thereafter each member shall be appointed for the term of six years. *Not more than one of the appointees to such commission shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employers, and not more than one of such appointees shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employes; not more than two of the members of the said commission shall belong to the same political party.*

SECTION 2. The governor at any time shall remove any member of the industrial commission of Ohio for inefficiency, neglect of duty, malfeasance, *misfeasance or nonfeasance* in office.

SECTION 3. No commissioner shall hold any position of trust or profit, or engage in any occupation or business, interfering or in-

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Ohio

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consistent with his duties as such commissioner, and no commissioner shall serve on any committee of any political party.

SECTION 4. Each of said commissioners shall receive an annual salary of five thousand dollars, payable in the same manner as the salaries of other state officers are paid. Before entering upon the duties of his office, each commissioner shall take and subscribe the constitutional oath of office and shall swear or affirm that he holds no position under any committee of a political party, which oath or affirmation shall be filed in the office of the governor. *Each member of the commission shall give a bond in the sum of ten thousand dollars, which bond shall be approved by the governor and filed with the treasurer of state. All employés or deputies of the commission receiving or disbursing funds of the state shall give bond to the state in amounts and with surety to be approved by the commission.*

SECTION 5. Within thirty days after this act goes into effect, such commission shall meet at the seat of government and organize by choosing one of its members as chairman; a majority of such commission shall constitute a quorum to transact business. No vacancy shall impair the rights of the remaining commissioners to exercise all the powers of the commission; and in case a vacancy \* \* \* occur, the remaining members of the commission shall exercise all of the powers and authorities of the commission until such vacancy is filled.

SECTION 6. The commission shall keep and maintain its office in the city of Columbus, Ohio, and shall provide suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps and appliances as they deem necessary, the expense thereof to be audited and paid in the same manner as other state expenses. The commission may hold sessions in any place within the state of Ohio.

SECTION 7. The commissioners, employés and deputies of the commission shall be entitled to receive from the state their necessary and actual expenses while traveling on business of the commission, either within or without the state of Ohio. Such expenses shall be presented in an account verified by the person who incurred the expense, approved by the chairman of the commission, and shall be audited and paid as other similar expenses are audited and paid.

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Ohio

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SECTION 8. The commission shall have an official seal, for the authentication of its orders and proceedings, upon which seal shall be engraved the words, "The industrial commission of Ohio," and such other design as the commission may prescribe; and the courts in this state shall take judicial notice of the seal of the said commission, and in all cases copies of orders, proceedings or records in the office of the industrial commission of Ohio, certified by the secretary of the said commission under its seal, shall be equal to the original as evidence.

SECTION 9. The commission shall be in continuous session and open for the transaction of business during all business hours of each and every day, excepting Sundays and legal holidays. The sessions shall be open to the public and the sessions of the commission shall stand and be adjourned without further notice thereof on its record. All of the proceedings of the commission shall be shown on its record, which shall be a public record, and all voting shall be had by calling each member's name by the secretary, and each member's vote shall be recorded on the proceedings as cast.

SECTION 10. Subject to the provisions of this act, the commission may adopt its own rules of procedure and may change the same from time to time in its discretion.

SECTION 11. *On and after the first day of September, 1913, the following departments of the state of Ohio, to-wit: Commissioner of labor statistics, chief inspector of mines, chief inspector of workshops and factories, chief examiner of steam engineers, board of boiler rules, and the state board of arbitration and conciliation, shall have no further legal existence, except that the heads of the said departments, and said boards, shall within ten days after the said date submit to the governor their reports of their respective departments for the portion of the year 1913 during which they were in existence, and on and after the first day of September, 1913, the industrial commission of Ohio shall have all the powers and enter upon the performance of all the duties conferred by law upon the said departments.*

SECTION 12. The industrial commission shall supersede and perform all of the duties of the state liability board of awards, provided in and by the act of the general assembly of the state of Ohio passed the thirty-first day of May, 1911 (102 O. L., 524) entitled, *(giving title of act) on and after the first day of September, 1913; and*

## Ohio

*said commission, on and after the first day of September, 1913, as successor of the said state liability board of awards, shall be vested with and assume and exercise all powers and duties cast by law upon said state liability board of awards, and on the first day of September, 1913, the term of office of the members constituting the said state liability board of awards of Ohio shall cease and terminate, together with all rights, privileges and emoluments connected therewith. (As amended by 103 Ohio Laws, 656).*

SECTION 13. The following terms as used in this act shall be construed as follows:

(1) The phrase "place of employment," shall mean and include every place, whether indoors or out, or under ground, and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business, is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is directly or indirectly, employed by another for direct or indirect gain or profit but shall not include any place where persons are employed in private domestic service or agricultural pursuits which do not involve the use of mechanical power.

(2) The term "employment," shall mean and include any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged, except in such private domestic service or agricultural pursuits as do not involve the use of mechanical power.

(3) The term "employer," shall mean and include every person, firm, corporation, agent, manager, representative, or other person having control or custody of any employment, place of employment or of any employé.

(4) The term "employé," shall mean and include every person, who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go, or work, or be at any time in any place of employment.

(5) The term "frequenter," shall mean and include every person, other than an employé, who may go in or be in a place of employment under circumstances which render him other than a trespasser.

(6) The term "deputy," shall mean and include any person employed by the industrial commission, designated as such deputy

## Ohio

by the commission who shall possess special, technical, scientific, managerial, professional or personal abilities or qualities in matters within the jurisdiction of the industrial commission, and who may be engaged in the performance of duties under the direction of the commission, calling for the exercise of such abilities or qualities.

(7) The term "order," shall mean and include any decision, rule, regulation, direction, requirement, or standard of the commission, or any other determination arrived at or decision made by such commission.

(8) The term "general order," shall mean and include such order as applies generally throughout the state to all persons, employments, or places of *employment*, or all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(9) The term "local order," shall mean and include any ordinance, order, rule, or determination of any city or village council, or any trustees, or board or officers of any city or village upon any matter over which the industrial commission has jurisdiction.

(10) The term "welfare," shall mean and include comfort, decency and moral well-being.

(11) The terms "safe," and "safety," as applied to any employment or a place of employment shall mean such freedom from danger to the life, health, safety or *welfare* of employés or frequenters as the nature of the employment will reasonably permit, including requirements as to the hours of labor with relation to the health and welfare of employés.

SECTION 14. The commission is authorized and empowered to employ, promote and remove a secretary, or secretaries, deputies, clerks, stenographers, and other assistants, as needed; to fix their compensation, and to assign to them their duties. Such employments and compensation to be first approved by the governor.

SECTION 15. Every employer shall furnish employment which shall be safe for the employés therein, and shall furnish a *place* of employment which shall be safe for the employés therein, and for frequenters thereof, and shall furnish and use safety devices and *safeguards*, and shall adopt and use methods and processes, follow and obey orders and prescribe hours of labor reasonably adequate to render such employment and places of employment

## Ohio

safe, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employés and frequenters.

SECTION 16. No employer shall require, permit or suffer any employé to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards, or fail to obey and follow orders or to adopt *and* use methods *and* processes reasonably adequate to render such employment and place of employment safe, and no employer shall fail or neglect to do *every other thing* reasonably necessary to protect the life, health, safety and welfare of such employés or frequenters; and no such employer or other person shall hereafter construct or occupy or maintain any place of employment that is not safe.

SECTION 17. No employé shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished or provided for use in any employment or place of employment, nor interfere in any way with the use thereof by any other person, nor shall any such employé interfere with the use of any method or process adopted for the protection of any employé in such employment or place of employment, or frequenter of such place of employment, nor fail or neglect to follow and obey orders and to do *every other thing* reasonably necessary to protect the life, health, safety and welfare of such employés and frequenters.

SECTION 18. Every employer shall furnish to the commission all information required by it to carry into effect the provisions of this act and shall make specific answers to all questions submitted by the commission relative thereto.

SECTION 19. Any employer receiving from the commission any blanks calling for information required by it to carry into effect the provisions of this act, with directions to fill out the same, shall cause *the same* to be properly filled out so as to answer fully and correctly *each question* therein propounded, and in case he is unable to answer any question, he shall give *a* good and sufficient reason for such failure; *and* said answers shall be verified under oath by the employer, or by the president, secretary, or other managing officer of the corporation, if the employer is a corporation, and returned to the commission at its office within the period fixed by the commission.

## Ohio

SECTION 20. Any commissioner or deputy of the commission may enter any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, safety, and welfare of the employés therein, and bring to the attention of every employer any law, or any order of the commission, and any failure on the part of *such* employer to comply therewith. No employer shall refuse to admit any commissioner or deputy of the commission to his place of employment.

SECTION 21. The industrial commission of Ohio is vested with the power and jurisdiction *on and after the first day of September, 1913*, to have such supervision of every employment and place of employment and of every other building and establishment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment or building or establishment, to be safe, and requiring the protection of the life, health, safety and welfare of every employé in such employment or place of employment, and every frequenter of such place of employment, including the power to regulate the hours of labor of employés in such employments and places of employment, with regard to the health and welfare of such employés to such extent as the nature of the employment will reasonably permit, *not inconsistent with law*.

SECTION 22. It shall also be the duty of the industrial commission, and it shall have full power, jurisdiction and authority:

(1) To appoint advisers, who shall without compensation, assist the industrial commission in the execution of its duties; to retain and assign to their duties any or all officers, subordinates and clerks of the commissioner of labor statistics, the chief inspector of mines, the chief inspector of workshops and factories, the chief examiner of steam engineers, the board of boiler rules *chief inspector of steam boilers* the state board of arbitration and conciliation, and the state liability board of awards;

(2) *On and after the first day of September, 1913*, to administer and enforce the General laws of this state relating to mines, manufacturing, mechanical, electrical, art and laundering establishments, *child labor, employment of minors, explosives*, printing, telegraph and telephone offices, railroad depots, hotels, memorial buildings, tenement and apartment houses, school houses, colleges, opera houses, halls, theatres, churches, infirmaries, children's



## Ohio

homes, hospitals, medical institutes, asylums, and other buildings used for the assemblage or betterment of people in the state, bakeries, employment offices, stores, intelligence offices and bureaus, manufacturers of cigars, sweat shops, fire escapes, and means of egress from buildings, scaffolds, hoists, ladders and other matters relating to the erection, repair, alteration or painting of buildings and structures, employment of females, hours of labor, licensed occupations and school attendance, \* \* \* and all other laws protecting the life, health, safety and welfare of employés in employments and places of employment, frequenters of places of employment or relating to the health and safety of persons occupying or assembled in the structures named above, *on and after the first day of September, 1913.*

(3) To investigate, ascertain, *and on and after the first day of September, 1913,* to declare and prescribe what hours of labor, safety devices, safeguards, or other means or methods of protection are best adapted to render the employés of every employment *and place of employment and frequenters of every place of employment,* safe, and to protect their welfare as required by law or lawful orders, and to establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of life, health, safety and welfare of employés;

(4) To ascertain *and on and after the first day of September, 1913,* to fix *such* reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employés in employments and places of employment or frequenters of places of employment;

(5) To ascertain, *and on and after the first day of September, 1913,* fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe;

(6) To investigate, ascertain and determine such reasonable classifications of persons, employments and places of employment as shall be necessary to carry out the purposes of this act;

(7) To adopt reasonable and proper rules and regulations rel-

## Ohio

ative to the exercise of its powers and authorities, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings; such rules and regulations shall not be effective until ten days after their publication. A copy of such rules and regulations shall be delivered to every citizen making application therefor, and a copy delivered with every notice of hearing;

(8) To do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employés, and to avoid the necessity of resorting to lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration, provide the necessary expenses of such boards, order reasonable compensation not exceeding five dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and *may* do all other things convenient and necessary to accomplish the purposes directed in this act. The commission shall designate a deputy to be known as chief mediator and may detail other deputies from time to time to act as assistants for the purpose of executing these provisions. The deputies may act on temporary boards without extra compensation;

(9) To establish and conduct free employment agencies, and *on and after the first day of September, 1913*, to license and supervise the work of private employment offices to do all in its power to bring together employers seeking employés and working people seeking employment, to make known the opportunities for self employment in this state, to aid in inducing minors to undertake promising skilled employments, \* \* \* and to encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in the state of Ohio and the remedies therefor in this and other states and countries, and it shall devise and adopt the most efficient means in its power to avoid unemployment, to provide employment and to prevent distress from involuntary idleness.

(10) To collect, collate and publish all statistical and other information relating to employés, employers, employments and

## Ohio

places of employment and such other statistics as may be necessary, and to make public reports in its judgment necessary;

(11) *On and after September 1, 1913, to examine and license persons who desire to act as steam engineers, and persons who desire to operate steam boilers and persons who desire to act as inspectors of steam boilers; to provide for the scope, conduct, and time of such examinations, to provide for, regulate and enforce the renewal and revocation of such licenses, to inspect and examine \* \* \* steam boilers and to make, publish and enforce rules and regulations and orders for the construction, installation, inspection and operation of steam boilers and all appliances connected with steam boilers and to do and require and enforce all things necessary to make such examination, inspection and requirements efficient;*

(12) *To rent and furnish \* \* \* offices as needed in cities in this state for the conduct of its affairs.*

SECTION 23. (1) *Upon petition after the first day of September, 1913, by any person that any employment or place of employment is not safe or is injurious to the welfare of any employé or frequenter, the commission shall proceed with or without notice to make such investigation as may be necessary to determine the matter complained of.*

(2) *After such hearing as may be necessary, the commission may enter such order relative thereto as may be necessary to render such employment or place of employment safe and not injurious to the welfare of the employés therein or frequenters thereof.*

(3) *Whenever the commission shall learn that any employment or place of employment is not safe or is injurious to the welfare of any employé or frequenter, it may of its own motion summarily investigate the same, with or without notice and issue such order as may be necessary thereto.*

SECTION 24. \* \* \* *All duties, liabilities, authority, powers and privileges conferred and imposed by law upon the commissioner of labor statistics, special agents of the commissioner of labor statistics, chief inspector of mines, district inspectors of mines, chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspectors of workshops and factories, chief examiner of steam engineers, assistant*

## Ohio

chief examiner of steam engineers, district examiners of steam engineers, the board of boiler rules, head of the department of the board of boiler rules and chief inspector of steam boilers, assistant chief inspector of steam boilers, general inspectors of steam boilers, special inspector of steam boilers, state board of arbitration and conciliation, are hereby imposed upon the industrial commission of Ohio and its deputies *on and after the first day of September, 1913.*

\* \* \* All laws relating to the commissioner of labor statistics, special agents of the commissioner of labor statistics, chief inspector of mines, district inspectors of mines, chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspectors of workshops and factories, chief examiner of steam engineers, assistant chief examiner of steam engineers, district examiners of steam engineers, the board of boiler rules, head of the department of the board of boiler rules and chief inspector of steam boilers, assistant chief inspector of steam boilers, general inspectors of steam boilers, special inspectors of steam boilers, state board of arbitration and conciliation, *on and after the first day of September, 1913*, shall apply to, relate and refer to the industrial commission of Ohio, *and its deputies. Qualifications prescribed by law for said officers and their assistants and employés shall be held to apply, wherever applicable, to the qualifications of the deputies of the commission assigned to the performance of the duties now cast upon such officers, assistants and employés.*

SECTION 25. All orders of the industrial commission of Ohio in conformity with law shall be in force and shall be prima facie reasonable and lawful; and all such orders shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose pursuant to the provisions of section 41 of this act, or until altered or revoked by the commission.

SECTION 26. (1) All general orders shall take effect within thirty days after their publication. Special orders shall take effect *as therein directed.*

(2) The commission shall, upon application of any employer grant such time as may be reasonably necessary for compliance with any order.

## Ohio

(3) Any person may petition the commission for an extension of time which the commission shall grant if it finds such extension of time necessary.

SECTION 27. (1) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness and lawfulness of any order of the commission in the manner provided in this act.

(2) Such petition for hearing shall be by verified petition filed with the commission, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable or unlawful, and every issue to be considered by the commission on the hearing. The petitioner shall be deemed to have finally waived all objection to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. All hearings of the commission shall be open to the public.

(3) Upon receipt of such petition, if the issues raised in such petition have theretofore been adequately considered, the commission shall determine the same by confirming, without hearing, its previous determination, or if such hearing is necessary to determine the issues raised, the commission shall order a hearing thereon and consider and determine the matter or matters in question at such time as shall be prescribed. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the commission may find directly interested in such decision.

(4) Upon such investigation, if it shall be found that the order complained of is unlawful or unreasonable, the commission shall substitute therefor such other order as shall be lawful and reasonable.

(5) Whenever at the time of final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the order of the commission, the commission shall grant such time as may be reasonably necessary for such compliance.

SECTION 28. (1) Nothing contained in this act shall be construed to deprive the council of any city or village or any board of trustees or officer of any city or village of any power or jurisdiction over

## Ohio

or relative to any place of employment, provided that whenever the industrial commission of Ohio shall, by an order fix a standard of safety or any hygienic condition for employments or places of employment, such order shall, upon the filing by the commission of a copy thereof with the clerk of the village or city to which it may apply, be held to amend or modify any similar conflicting local order in any particular matters governed by said order. Thereafter no local officer shall make or enforce any order contrary thereto.

(2) Any person affected by any local order in conflict with an order of the commission may, in the manner provided in this act, petition the industrial commission for a hearing on the ground that such local order is unreasonable and in conflict \* \* \* with the order of the commission. The petition for such hearing shall conform to the requirements set forth for a petition in section 27 of this act.

(3) Upon receipt of such petition the commission shall order a hearing thereon, to consider and determine the issues raised by such appeal, such hearing to be held in the village or city where the local order appealed from was made. Notice of the time and place of such hearing shall be given to the petitioner and such other persons as the commission may find directly interested in such decision, including the clerk of the village, or the mayor of the village or city from which such appeal came. If upon such investigation, it shall be found that the local order appealed from is unreasonable and in conflict with the order of the commission, the commission may modify its order and shall substitute for the local order appealed from such order as shall be reasonable and legal in the premises and thereafter the said local order shall, in such particulars, be void and of no effect.

SECTION 29. \* \* \* No action, proceeding or suit to set aside, vacate or amend any order of the commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have applied to the commission for a \* \* \* hearing thereon at the time and as provided in section 27 of this act, and in the petition therefor shall have raised every issue raised in such action.

\* \* \* Every order of the commission shall, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of the prose-

## Ohio

cution for such violation an action shall have been brought to vacate and set aside such order, as provided in section 41 of this act.

SECTION 30. Each of the commissioners and the secretary of the commission for the purposes mentioned in this act shall have power to administer oaths, certify to official acts, issue subpoenas, compel attendance of witnesses and the production of papers, books, accounts, documents and testimony. In case of the failure of any person to comply with any order of the commission or any subpoena lawfully issued, or upon the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the common pleas judge of any county in this state on the application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

SECTION 31. Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the court of common pleas, which shall be audited and paid by the state out of the state treasury in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the commission. But no witness subpoenaed at the instance of the parties other than the commission shall be entitled to compensation from the state for attendance or travel, unless the commission shall certify that his testimony was material to the matter investigated.

SECTION 32. The commission or any party may in any investigation cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions.

SECTION 33. A full and complete record shall be kept of all proceedings had before the commission on any investigation, and all testimony shall be taken down by a stenographer appointed by the commission.

SECTION 34. Publication of rules and orders of the commission shall be made by the commission in \* \* \* *pamphlet form to be furnished on demand at the office of the commission.* The expenses of publications shall be audited and paid as are other expenses of the commission.

## Ohio

SECTION 35. (1) For the purpose of making any investigation with regard to any employment or place of employment, the commission shall have power to appoint, by an order in writing, any member of the commission, any deputy, who is a citizen of the state, or any other competent person *who is a resident of the state* as an agent whose duty shall be prescribed in such order.

(2) In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in this act to the commission, and the same powers as a master commissioner appointed by a court of common pleas with regard to taking testimony.

(3) The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude the taking of further testimony if the commission so orders, nor further investigation.

SECTION 36. The commission shall have the authority to direct any deputy who is a citizen to act as special prosecutor in any action, proceeding, investigation, hearing or trial relating to matters within its jurisdiction.

Upon the request of the commission, the attorney-general or the prosecuting attorney of the county in which any investigation, hearing or trial had under the provisions of this act is pending, shall aid therein and prosecute under the supervision of the commission, all necessary actions or proceedings for the enforcement of this act and all other laws of this state relating to the protection of life, health, safety and welfare, and for the punishment of all violations thereof.

SECTION 37. A substantial compliance with the requirements of this act shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

SECTION 38. *Any employer or other person in interest being dissatisfied with any order of the Commission may commence an action in the Supreme court of Ohio, against the Commission as defendant to set aside, vacate or amend any such order on the ground that the order is*



## Ohio

*unreasonable or unlawful and the Supreme court of Ohio, is hereby authorized and vested with exclusive jurisdiction to hear and determine such action. The commission shall be served with summons as in other civil cases. The answer of the commission shall be filed within ten days after service of summons upon it and with its answer it shall file a certified transcript of its record in said matter. Upon the filing of said answer said action shall be at issue and shall be advanced and assigned for trial by the court, upon the application of either party, at the earliest possible date.*

SECTION 39. (1) *If upon the trial of such action it shall appear that all issues arising in such action have not theretofore been presented to the commission in the petition filed as provided in section 27 of this act, or that the commission has not theretofore had ample opportunity to hear and determine any of the issues raised in said act, or has for any reason not in fact heard and determined the issues raised, the court shall, before proceeding to render judgment, unless the parties to such action stipulate to the contrary, transmit to the commission a full statement of such issue or issues not adequately considered and shall stay further proceedings in such action for fifteen days from the date of such transmission and may thereafter grant such further stay as may be necessary.*

(2) *Upon the receipt of such statement, the commission shall consider the issues not theretofore considered, and may alter, modify, amend, or rescind its order complained of in said action, and shall report its order thereon to said court within ten days from the receipt of the statement from the court for further hearing and consideration.*

(3) *The court shall thereupon order such amendment or other proceeding as may be necessary to raise the issues as changed by such modification of order as may have been made by the commission upon the hearing, if any such modification has in fact been made, and shall thereupon proceed with such action in the manner provided by law for other civil actions.*

SECTION 40. *No court of this state except the Supreme court of Ohio, to the extent specified by this act, shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend or annul any order of the Industrial Commission of Ohio, or to suspend or delay the execution or operation thereof or to enjoin, restrain or interfere with the Commission in the performance of its official duties, provided*

## Ohio

*that the writ of mandamus shall lie from the said Supreme court of Ohio, to the Commission in all proper cases.*

SECTION 41. The pendency of an action to set aside, vacate or amend an order \* \* \* of the commission shall not of itself stay or suspend the operation of an order \* \* \* of the commission; but, during the pendency of said action the said Supreme court of Ohio, in its discretion may stay or suspend, in whole or in part, the operation of the commission's order. \* \* \* But no order so staying or suspending an order \* \* \* of the commission shall be made by the said court otherwise than upon three days' notice and after hearing. In case the order \* \* \* is stayed or suspended the order of the court shall not become effective until a suspending bond first shall have been executed, filed with and approved by the commission, or by the said court or the clerk thereof, payable to the state of Ohio, and sufficient in amount and security to insure the prompt payment by the party petitioning to set aside, vacate or amend such order \* \* \* of all damages caused by the delay in the enforcement of the order \* \* \* of the commission.

SECTION 42. All actions and proceedings under this act, and all actions or proceedings to which the industrial commission of Ohio or the state of Ohio may be parties, and in which any question arises under this act, or under or concerning any order \* \* \* of the industrial commission, shall be preferred over all other civil cases, except election causes and causes involving or affecting the public utilities commission of Ohio, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney of the industrial commission in any action or proceeding in which he may be allowed to intervene.

SECTION 43. If any employer, employé or other person shall violate any provision of this act or shall do any act prohibited by this act or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the commission, for which no penalty has been specifically provided, or fail, neglect or refuse to obey any lawful order given or made by the commission, or any judgment or decree made by any court in connection with the provisions of this act, for each such violation, failure or refusal such employer or other person shall be fined not less than fifty dollars nor more than one thousand *dollars* for the first offense and not

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less than one hundred nor more than five thousand dollars for each subsequent offense.

SECTION 44. Every day during which any person, persons or corporations, or any officer, agent or employé thereof shall fail to observe and comply with any order of the commission, or to perform any duty enjoined by this act shall constitute a separate and distinct violation of such order or said section as the case may be.

SECTION 45. The sections of this act, and every part of such sections, are hereby declared to be independent sections, and parts of sections and the holding of any section or part thereof to be void or ineffective shall not affect any other section or part thereof.

SECTION 46. That sections 872, 873, 874, 876, 877, 878, 879, 880, 881, 883, 884, 897, 898, 900, 902, 903, 908, 979, 981, 983, 984, 986, 987, 988, 993, 1001, 1028-4, 1038, 1039, 1042, 1043, 1044, 1046, 1058, 1058-6, 1058-9, 1058-13, 1058-14, 1058-15, 1058-27, 1059, 1060, 1061, 1062, 1078, *of the General Code of Ohio be, and the same are hereby repealed from and after September 1st, 1913.*

Approved by Governor March 18, 1913.

## OREGON

(L. 1913, House Bill No. 27)

AN ACT creating the State Industrial Accident Commission and providing an Industrial Accident Fund, making an appropriation for such fund and providing for the administration of the terms of this Act, providing for the collection and disbursement of funds for the benefit, compensation and care of workmen, prescribing the duties of employers and workmen subject to this Act, and providing penalties for a violation of the terms of this Act, and abolishing in certain cases the defenses of assumption of risk, contributory negligence and the negligence of a fellow servant in actions for personal injury and death.

*Be it enacted by the People of the State of Oregon:*

SECTION 1. The State of Oregon recognizes that the prosecution of the various industrial enterprises which must be relied upon to create and preserve the wealth and prosperity of the State involves the injury of large numbers of workmen, resulting in their partial or total incapacity or death, and that under the rules of the common law and the provisions of the statutes now in force an unequal burden is cast upon its citizens, and that in determining the responsibility of the employer on account of injuries sustained by his workmen, a great and unnecessary cost is now incurred in litigation, which cost is divided between the workmen, the employers and the taxpayers, who provide the public funds, without any corresponding benefit, to maintain courts and juries to determine the question of responsibility under the law as it now exists, and that the State and its taxpayers are subjected to a heavy burden in providing care and support for such injured workmen and their dependents, and that this burden should, in so far as may be consistent with the rights and obligations of the people of the State, be more fairly distributed as in this Act provided.

Section 2. A commission is hereby created which shall be known as the "State Industrial Accident Commission," to be composed of three commissioners. Immediately upon the taking

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Oregon

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effect of this Act, the Governor shall appoint such Commissioners, not more than two of whom shall belong to one political party. Such Commissioners shall be appointed for respective terms expiring on the first Monday in January in the years 1915, 1916 and 1917; that thereafter the Commissioners shall be appointed for terms of four years by the same authority on the first Monday in December in each year next preceding the expiration of the term of a Commissioner. Each Commissioner appointed hereunder shall hold office until his successor is appointed and qualified. Any vacancy shall be filled by appointment by the Governor. Inasmuch as the duties to be performed by such Commissioners vitally concern the employers, the employés, as well as the whole people, of the State, it is hereby declared to be the purpose of this Act that persons be appointed as Commissioners who shall fairly represent the interests of all concerned in its administration.

Section 3. The Governor may at any time remove any Commissioner appointed by him for inefficiency, neglect of duty or malfeasance in office. Before such removal he shall give such Commissioner a copy of the charges against him and shall fix the time when he can be heard in his own defense, which shall not be less than ten days thereafter, and such hearing shall be open to the public. If such Commissioner shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such Commissioner and his findings thereon, with a record of the proceedings. Such power of removal shall be absolute and there shall be no right of review in any court whatsoever.

No Commissioner shall hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

Before entering on the duties of his office, each Commissioner shall take and subscribe to an oath or affirmation that he will support the constitution of the United States and of this State and faithfully and honestly discharge the duties of such office of Commissioner; that he holds no other office or position of profit, and that he pursues and will pursue while such Commissioner no other calling or vocation, and that he holds, and while such Commissioner will hold, no position under any political party, which

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Oregon

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oath or affirmation shall be filed in the office of the Secretary of State.

Each of the Commissioners shall also, before entering upon the duties of his office, execute a bond payable to the State of Oregon, in the penal sum of \$10,000, with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of his office, which bond when so executed and approved shall be filed in the office of the Secretary of State.

Each of the Commissioners shall receive an annual salary of thirty-six hundred dollars (\$3,600.00), payable from the fund hereinafter provided.

Section 4. The Commissioners so appointed under this Act shall, within twenty days after their appointment, meet at the State Capitol and organize by electing one of their number chairman, who shall serve until the Commissioner to be appointed for the term commencing in January, 1915, shall have qualified and taken office. Immediately after the qualification of the Commissioner for the term commencing in January, 1915, and biennially thereafter, the Commissioners shall meet at the office of the Commission, which shall be maintained at the State Capitol, and shall elect a chairman, who shall serve for two years and until his successor is chosen.

Section 5. A majority of the Commissioners shall constitute a quorum to transact business, and the act or decision of any two of the Commissioners shall be deemed the act or decision of the Commission. No vacancy shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Section 6. The Commission may employ and terminate the employment of such assistants, experts and clerks as may be required in the administration of this act at a total expense not exceeding twenty-five thousand dollars (\$25,000.00) per annum.

Section 7. The Commission, in its name, may sue and be sued, and the Commission shall have a seal which shall bear the name of the Commission. The Commission is hereby charged with the administration of the provisions of this Act, and to that end may hold sessions at any place within the State, and is hereby authorized to issue subpoenas requiring the attendance of witnesses and the production of documents, and obedience to such subpoenas may be compelled, on application of the Commission, by the Cir-

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Oregon

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cuit Court for the county where such subpoenas shall be returnable.

Section 8. The Commission is hereby authorized to make and declare all rules and regulations which shall reasonably be required in the administration of the provisions of this act, and shall require the making of reports of accidents, reports of amounts paid or agreed to be paid as wages by employers to workmen and may prescribe and require the use of the pay-roll form by employers which shall carry such specific information as may be deemed necessary by the Commission, and may incur such expenses as the Commission shall determine reasonably necessary in the administration of this act.

Section 9. The Commission is hereby required to render to the Governor of the State, quarter yearly, a report with full statistical information covering the acts of the Commission and the receipt and disbursement of moneys hereunder.

Section 10. All persons, firms and corporations engaged as employers in any of the hazardous occupations hereafter specified shall be subject to the provisions of this act; *provided, however*, that any such person, firm or corporation may be relieved of certain of the obligations hereby imposed, and shall lose the benefits hereby conferred by filing with the Commission written notice of an election not to be subject thereto in the manner hereinafter specified; *provided, however*, that where an employer is engaged in a hazardous occupation, as hereinafter defined, and is also engaged in another occupation or other occupations not so defined as hazardous, he shall not be subject to this act as to such non-hazardous occupations, nor shall his workmen wholly engaged in such non-hazardous occupations be subject thereto except by an election as authorized by section 31 thereof. *Provided, however*, that employers and employes who are engaged in an occupation partly hazardous and partly non-hazardous shall come within the terms of this act the same as if said occupation were wholly hazardous.

Section 11. All workmen in the employ of persons, firms or corporations who as employers are subject to this act shall also be subject thereto; *provided, however*, that any such workman may be relieved of the obligations hereby imposed and shall lose the benefits hereby conferred by giving to his employer written notice

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Oregon

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of an election not to be subject thereto in the manner hereinafter specified. Any workman of the age of 16 years and upwards shall himself exercise the election hereby authorized. The right of election hereby authorized shall be exercised on behalf of any workman under the age of 16 years by his parents or guardian. This act shall not apply to workmen of less than the minimum age prescribed by law for the employment of minors in the occupation in which such workmen shall be engaged.

Section 12. Every workman subject to this act while employed by an employer subject to this act who after June 30, next following the taking effect of this act, while so employed sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or the beneficiaries as hereinafter defined, of such workman in case such injury results in death, shall be entitled to receive from the Industrial Accident Fund hereby created the sum or sums hereinafter specified and the right to receive such sum or sums shall be in lieu of all claims against his employer on account of such injury or death except as hereinafter specially provided. *Provided, however,* that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit, and if he take under this act the cause of action against such other shall be assigned to the state for the benefit of the accident fund. If the other choice is made the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit which would leave a deficiency to be made good out of the accident fund may be made only with the written approval of the department.

Section 13. The hazardous occupations to which this Act is applicable are as follows:

Factories, mills and workshops where machinery is used; print-



## Oregon

ing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water works, reduction works, breweries, elevators, wharves, docks, dredges, smelter, powder works, laundries operated by power; quarries, engineering works; logging, lumbering and ship-building operations; logging, street and interurban railroads not engaged in interstate commerce; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants, or lines, steam heating or power plants, railroads not engaged in interstate commerce, steamboats, tugs and ferries.

Section 14. In the sense of this Act words employed mean as here stated, to wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, rooms or place the employer of the person working therein, has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel, or rock is cut or taken for manufacturing, building or construction.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads not then engaged in interstate commerce, logging roads, interurban railroads not then engaged in interstate commerce, harbors, docks, canals, electric,

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Oregon

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steam or water power plants, telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

The term "employer" used in this act shall be taken to mean any person, firm or corporation, but not including municipal corporations, that shall contract for and secure the right to direct and control the services of any person, and the term "workman" shall be taken to mean any person, male or female, who shall engage to furnish his or her services subject to the direction or control of an employer.

Dependent means any of the following named relatives of a workman whose death results from an injury and who leaves surviving no widow, widower or child under the age of sixteen years, viz: Invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident are dependent in whole or in part for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or mother, husband and wife or children, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this Act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child," as used in this Act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

Any member or officer of any corporate employer who shall be carried upon the payrolls at a salary or wage not less than the average salary or wage of such payroll, but not otherwise, shall be deemed to be a workman.

Section 15. Any employer engaged in any of such hazardous occupations who would otherwise be subject to this act, may on or before June 15 next following the taking effect of this act file

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Oregon

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with the Commission a statement in writing declaring his election not to contribute to the Industrial Accident Fund hereby created, and thereupon such employer shall be relieved from all obligations to contribute thereto, and such employer shall be entitled to none of the benefits of this act, and shall be liable for injuries to or death of his workmen, which shall be occasioned by his negligence, default or wrongful act as if this act had not been passed, and in any action brought against such an employer on account of an injury sustained after June 30 next following the taking effect of this act, it shall be no defense for such employer to show that such injury was caused in whole or in part by the negligence of a fellow-servant of the injured workman, that the negligence of the injured workman, other than in his wilful act, committed for the purpose of sustaining the injury, contributed to the accident, or that the injured workman had knowledge of the danger or assumed the risk which resulted in his injury.

Any person, firm or corporation hereafter engaging as an employer in any of said hazardous occupations may file a like notice with said Commission within ten days after becoming such employer and shall thereby and thereupon become relieved from making contributions to said fund and shall be liable to his workmen as in the case of existing employers so electing and shall as in the case of such employers lose all benefit of the defenses above described. From and after June 30 next following the taking effect of this Act, all employers engaged in said hazardous occupations shall display in a conspicuous manner about their works and in a sufficient number of places reasonably to inform their workman of the fact, printed notices stating that they are or are not, as the case may be, contributors to the fund. The failure of an employer to display such notices shall be a misdemeanor.

Section 16. All such employers who shall not as herein provided give to the Commission written notice of their election not to contribute to said fund, shall be subject to all of the provisions of this Act until and including the next succeeding thirtieth day of June, and thereafter until and including June 30 of each succeeding year, unless at least 60 days prior to June 30 in some year written notice shall be given to said Commission of an election to cease contributing to such fund, whereupon from and after the succeeding first day of July the status of the employer giving such notice shall

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Oregon

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be that resulting from the giving of the notice first above prescribed.

Section 17. An employer who has so elected not to contribute hereunder may at any time by giving to said Commission 30 days' written notice recall such election, and from and after the expiration of such 30 days such employer shall become and continue in all respects subject to this Act.

Section 18. On or before June 30 next following the taking effect of this Act any workman in the employ of an employer subject to this Act may give notice in writing to his employer of his election not to become subject to this Act, and any workman entering the employment of such an employer after such date may at such time give a like notice and thereupon such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof. Any workman in the employ of an employer who shall have elected not to contribute to the fund hereby created and who shall have recalled such election, may within fifteen days after such recall by his employer has become effective, give notice in writing to his employer of his election not to become subject to this Act, and thereupon such workman shall in no wise be subject to the provision or entitled to any of the benefits hereof. But if such workman shall sustain an injury within such period of fifteen days and before he shall have elected not to become subject to this Act, he shall have the option to be exercised before suit brought, of taking the benefits hereby provided or of proceeding against his employer as if this Act had not been passed. Any workman who shall be in the employ of an employer who shall hereafter engage in any of said hazardous occupations and who shall have become subject to this Act, may give notice in writing to his employer within fifteen days after his employer shall have engaged in such hazardous occupations, of his election not to become subject to this act, and thereupon and thereafter such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof, but if such workman shall sustain an injury within such period of 15 days and before he shall have elected not to become subject to this act, he shall have the option, to be exercised before suit brought, of taking the benefit hereby provided or of proceeding against his employer as if this act had not been passed. Any workman who has so elected not to become subject to this act may at

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Oregon

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any time by giving to his employer who is then subject to this act, 30 days' notice, recall such election, and after expiration of such 30 days such workman shall become and continue in all respects subject to this act.

Any workman who has become subject to this act shall, if he remains in the service of the same employer, continue subject to this act to and including the next succeeding thirtieth day of June and thereafter until and including the thirtieth day of June of each succeeding year unless at least 30 days prior to June 30th in some year he shall give written notice to his employer of his election not to be longer subject to this act, whereupon and after the succeeding first day of July such workman shall be no longer subject to this act.

Section 19. Every employer engaged in any of said hazardous occupations who shall not have served notice of his election not to contribute hereunder is hereby authorized and required to retain from the moneys earned by each of his workmen who is subject to the Act a sum equal to five-tenths of one per cent of the moneys so earned in each calendar month, and in any event at least 25 cents each month, and is hereby required, on or before the fifteenth day of the next succeeding month to pay to the Commission the sum so retained and an additional sum equal to six times such amount.

Employers and workmen shall be relieved from contribution to said fund under the following conditions:

For the purpose of this section all employers shall be held to be included in Class A or Class B.

Class A shall include the following industries:

Electric light and power companies, telephone and telegraph companies, railroads and street railroads, water works, mining of all kinds, logging and lumbering operations, quarries, smelting and reduction works, ship building and stevedoring, stone crushing works, grain elevators, ice factories and cold storage plants, general construction work of all kinds, including excavation, erection of structures and wrecking and repair of same, grading, cement and concrete work, manufactories of chemicals, lumber, mineral waters, rope and cordage, fireworks, pulp and paper, paper boxes and bags, cement and furniture, wood working plants of all kinds, including cooperage, packing houses, powder works, iron,

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Oregon

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steel and metal works, foundries, breweries, gas works, oil works, and cereal mills.

Class B shall include all other industries subject to this Act, including those brought under its operation in pursuance of the provisions of section 31 hereof.

Whenever an employer included in Class A shall have made payments into said fund, not including, however, moneys retained from his workmen's wages, of an amount equal to three per cent of his annual pay roll computed by taking twelve times his current monthly pay roll of workmen subject to this Act, he shall thereafter be exempted from making further payment to such fund, provided that such employer shall not be entitled to such exemption if there shall have been paid out of said fund or set apart therefrom as hereinafter provided, on account of injuries sustained by his workman, sums which when deducted from the amount so paid by him shall reduce his payments to an amount less than three per cent of his annual pay roll. Such exemption shall continue until the amount paid by the employer shall either by subtracting therefrom payments made from such fund together with money set apart therefrom on account of injuries sustained by his workmen or by an increase in his pay roll fall below a sum equal to three per cent of his annual pay roll, so computed, whereupon his obligation to make such payments shall be the same as hereinbefore required.

Whenever an employer included in Class B shall have made payment into said fund, not including, however, moneys retained from his workmen's wages, of an amount equal to one and one-half per cent of his annual pay roll computed by taking twelve times his current monthly pay roll of workmen subject to this act, he shall thereafter be exempted from making further payment to such fund, provided that such employer shall not be entitled to such exemption if there shall have been paid out of said fund or set apart therefrom as hereinafter provided, on account of injuries sustained by his workmen, sums which when deducted from the amount so paid by him, shall reduce his payments to an amount less than one and one-half per cent of his annual pay roll. Such exemption shall continue until the amount paid by the employer shall either by subtracting therefrom payments made from such fund together with moneys set apart therefrom on account of in-

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Oregon

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juries sustained by his workmen or by an increase in his pay roll fall below a sum equal to one and one half per cent of his annual pay roll, so computed, whereupon his obligation to make such payments shall be the same as hereinbefore required.

In computing the amount paid out or set apart from said fund by reason of injuries sustained by the workmen of an employer for the purpose of determining the right of such employer to exemption from contributions hereunder, no account shall be taken of sums paid out or set apart in any calendar year in excess of six per cent of such employer's total pay roll for such year. Whenever any employer shall have been relieved of the obligation to continue payments to such fund as in this section provided, he shall during the period of such exemption cease retaining any sums hereunder from the wages of any workmen. Neither the employer nor the workman shall be entitled to the exemption provided by this section unless there shall be in said Industrial Accident Fund sufficient moneys to meet all payments which shall have then accrued with a surplus of ten per cent (10%) thereon, and unless there shall have been set apart by the State Treasurer from said fund the amounts hereinafter required, on account of injuries resulting in death or permanent disability.

Section 20. There is hereby created a fund to be known as the Industrial Accident Fund, which fund shall be held by the State Treasurer and by him deposited in such banks as are authorized to receive deposits of the general funds of the State. All moneys received by the Commission hereunder shall be by it paid over forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund, and there is hereby appropriated out of any moneys in the general fund in the State Treasury not otherwise appropriated the sum of fifty thousand dollars (\$50,000), which shall become a part of such fund. There is also appropriated annually out of any moneys in the State Treasury not otherwise appropriated a sum equal to one-seventh of the total sum which shall be received by the State Treasurer under the provisions of section 19 hereof, and the moneys so appropriated shall become a part of such fund. All payments authorized by this Act, including all salaries, clerk hire and all other expenses, shall be made from the industrial Accident Fund.

Section 21. If any workman while he is subject to this Act

## Oregon

and in the service of an employer who is thus bound to contribute to the Industrial Accident Fund shall sustain a personal injury by accident arising out of and in the course of his employment caused by violent or external means he, or his beneficiaries or dependents, if the injury result in death, shall receive compensation according to the following schedule:

(a) Where death results from the injury and expenses of burial shall be paid in all cases not to exceed one hundred dollars (\$100) in any case, and

1. If the workman leaves a widow or invalid widower, a monthly payment of thirty dollars (\$30) shall be paid throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive six dollars (\$6) per month for each child of the deceased under the age of sixteen years at the time of the occurrence of the injury until such minor shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) shall not exceed fifty dollars (\$50). Upon remarriage of a widow she shall receive once for all a lump sum equal to ten times her monthly allowance, viz: the sum of three hundred dollars (\$300), but the monthly payments for the child or children shall continue as before.

(2) If the workman leaves no wife or husband but a child or children under the age of sixteen years, a monthly payment of fifteen dollars (\$15.00) shall be made to each child until such child shall reach the age of sixteen years; *provided, however*, that if any child is under the age of sixteen years and over the age of fifteen years, he shall be entitled to recover such payments for a period of one year, but the total monthly payment shall not exceed fifty dollars (\$50), and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to 50 per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case, shall not exceed thirty dollars (\$30) per month. If any dependent is under the age of 16 years at the time of the occurrence of the injury, the payment to such de-



## Oregon

pendent shall cease when such dependent shall reach the age of 16 years, excepting a daughter, the payment to whom shall cease when she shall have reached the age of eighteen years. *Provided, however,* that if any child is under the age of sixteen years and over the age of fifteen years, he shall be entitled to recover such payments for a period of one year. The payment to any dependent shall cease if, and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of 21 years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty-five dollars (\$25) per month for each month after his death until the time at which he would have arrived at the age of 21 years, *provided, however,* that such parents shall be entitled thereafter to compensation as dependents under the provisions of the first clause of this paragraph three.

(4) In the event a surviving spouse receiving monthly payments shall die leaving a child or children under the age of 16 years, the sum he or she shall be receiving on account of such child or children shall thereafter, until such child shall arrive at the age of 16 years, be paid to the child increased to fifteen dollars per month; *provided, however,* that if any such child is under the age of sixteen years and over the age of fifteen years he shall be entitled to recover such payments for a period of one year, but the total to all children shall not exceed the sum of fifty dollars (\$50) per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury the sum of thirty dollars (\$30).

(2) If the workman have a wife or invalid husband, but no child under the age of 16 years, the sum of thirty-five dollars (\$35). If the husband is not an invalid the monthly payment of thirty-five dollars (\$35) shall be reduced to thirty dollars (\$30).

## Oregon

(3) If the workman have a wife or husband and a child or children under the age of 16 years, or being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by six dollars (\$6) for each such child until such child shall arrive at the age of 16 years, but the total monthly payment shall not exceed fifty dollars (\$50).

(c) If the injured workman die during such period of total disability, whatever the cause of death, leaving a widow, invalid widower, or child under the age of 16 years, the surviving widow, or invalid widower, shall receive thirty dollars (\$30) per month until death or remarriage to be increased six dollars (\$6) per month for each child under the age of 16 years until such child shall arrive at the age of 16 years; but if such child is, or shall be, without father or mother, such child shall receive fifteen dollars (\$15) per month until arriving at the age of 16 years, *provided, however,* that if any child is under the age of 16 years and over the age of 15 years, he shall be entitled to recover such payment for the period of one year. The total combined monthly payment under this paragraph shall in no case exceed fifty dollars (\$50). Upon remarriage, the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary the schedule of payments contained in paragraphs 1, 2 and 3 of the foregoing subdivision b, shall apply so long as the total disability shall continue, increased 50 per cent for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed 60 per cent of the monthly wage (the daily wage multiplied by 26) the workman was receiving at the time of his injury.

(e) When the disability is or becomes partial only and is temporary in character, the workman shall receive for a period not exceeding two years that proportion of the payments provided for total disability which his earning power at any kind of work bears to that existing at the time of the occurrence of the injury.

(f) Permanent partial disability means the loss of either one arm, one hand, one foot, loss of hearing in one or both ears, loss of one eye, one or more fingers, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent

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Oregon

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partial disability. Where permanent partial disability shall result from an injury, the workman shall receive the sum of twenty-five dollars (\$25) a month for the period stated against such injury, respectively as follows:

In case of the loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, ninety-six (96) months.

The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, seventy-six (76) months.

The loss by separation of one leg, at or above the knee joint, or the permanent and complete loss of the use of one leg, eighty-eight (88) months.

The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, sixty-four (64) months.

The permanent and complete loss of hearing in both ears, ninety-six (96) months.

The permanent and complete loss of hearing in one ear, forty-eight (48) months, or, at the option of the workman, nine hundred dollars (\$900) in a lump sum.

The permanent and complete loss of the sight of one eye forty (40) months, or, at the option of the workman, eight hundred and fifty dollars (\$850) in a lump sum.

The loss by separation of a thumb twenty-four (24) months, or, at the option of the workman, six hundred dollars (\$600) in a lump sum.

The loss by separation of a first finger, sixteen (16) months, or, at the option of the workman, three hundred fifty dollars (\$350) in a lump sum; the second finger nine (9) months, or, at the option of the workman, two hundred dollars (\$200) in a lump sum; a third finger, eight (8) months, or, at the option of the workman, one hundred and seventy-five dollars (\$175) in a lump sum; a fourth finger, six (6) months, or, at the option of the workman, one hundred and fifty dollars (\$150) in a lump sum.

The loss of one phalange of the thumb shall be considered equal to the loss of one-half a thumb; the loss of one phalange of a finger, equal to the loss of one-third of a finger, and the loss of two phalanges of a finger, equal to the loss of one-half a finger, and the com-

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Oregon

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pensation for the respective proportions of the above period or in the respective proportions of the above lump sum shall be payable. The loss of more than one phalange of a thumb, or more than two phalanges of a finger shall be considered as the loss of an entire thumb or finger.

The loss by separation of a great toe, ten (10) months or, at the option of the workman, two hundred and fifty dollars (\$250) in a lump sum; any other toe, four (4) months, or, at the option of the workman, one hundred dollars (\$100) in a lump sum.

In all other cases of injury resulting in permanent partial disability, the compensation shall bear such relation to the periods stated in this clause as the disabilities bear to those produced by the injuries named in this schedule, and payments shall be made for proportionate periods, not exceeding, however, ninety-six (96) months, and in all such cases where the period of payment shall not exceed twelve (12) months, but in none other, shall the workman be entitled to a lump sum equal to the present value of such monthly payments computed at an interest rate of four per cent per annum.

If any workman entitled to compensation on account of a permanent disability shall have received compensation for either temporary total disability or temporary partial disability by reason of the same injury which shall entitle him to compensation for permanent partial disability, the number of months during which he shall be entitled to payments for such permanent partial disability shall be reduced by the number of monthly payments which he shall have received on account of such temporary total disability or temporary partial disability.

(g) For every case of injury resulting in death, or permanent total disability or permanent partial disability on account of which deferred payments are provided for a period exceeding twenty-four (24) months, it shall be the duty of the Commission forthwith to notify the State Treasurer in writing of the amount required to equal at four per cent interest per annum the present worth of the monthly installments payable on account of such injury, the number of such payments being computed in case of permanent total disability according to the age of the injured workman, and in the case of death according to the ages of the beneficiaries, both of such computations being according to the

## Oregon

American Mortality Table and the expectation of life thereunder, and in the case of permanent partial disability according to the schedule above prescribed. Thereupon the State Treasurer shall transfer from the Accident Fund to a fund to be known as the Segregated Accident Fund the amount so specified by the Commission. All moneys comprised in the Segregated Accident Fund shall be invested by the State Treasurer in the class of securities authorized for the investment by banks of savings deposits under the laws of this State. The Segregated Accident Fund and its earnings shall be charged with the payment of the installments on account of which such segregations shall be made. The State Treasurer shall keep an accurate account of the earnings of and payments from the Segregated Accident Fund and may borrow from the Accident Fund to meet monthly payments pending conversion into cash of any security and in such case shall repay such temporary loan out of the cash realized from the security. Any deficiency in the Segregated Accident Fund shall be made good out of and any balance or overplus shall revert to the Accident Fund.

(h) Should a further accident occur to a workman already receiving a monthly payment under this section for a disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries and his past receipt of money under this act.

(i) If aggravation, diminution or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case, the Commission may, upon the application of the beneficiary, or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided, or, in a proper case, terminate the payments.

(j) A husband or wife of an injured workman, who has deserted said injured workman for more than one year prior to the time of the injury or subsequently shall not be a beneficiary under this act.

(k) If a beneficiary shall reside or remove out of the State and shall have been such nonresident for a period of one year, the Com-

## Oregon

mission may, in its discretion, convert any monthly payments thereafter to become due to such beneficiary into a lump sum payment, not in any case exceeding four thousand dollars (\$4,000), by paying a sum equal to three-fourths of the present value of such monthly payments, estimated as to duration by the life expectancy of the beneficiary in case of death or total permanent disability and computed according to the American Mortality Table and on the basis of interest at the rate of four per cent per annum, or, with the consent of the beneficiary for a lesser sum, and in any case the Commission may, in its discretion, pay over to any beneficiary in a lump sum an amount not exceeding one-fourth of the present value of the monthly installments payable to such beneficiary and computed as aforesaid, and thereupon all subsequent monthly installments shall be proportionately reduced.

Section 22. If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the Accident Fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act, and also have cause of action against the employer, as if this act had not been passed, for damages over the amount payable hereunder.

A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided herein, but in the event of a lump sum payment becoming due under this act to such minor workman, the control and management of any sum so paid shall be within the jurisdiction of the courts as in the case of other property of minors.

Section 23. The Commission shall have authority to provide, under uniform rules and regulations, first aid to workmen who are entitled to benefits hereunder, together with transportation, medical and surgical attendance and hospital accommodations for injured workmen at an expense not exceeding two hundred and fifty dollars (\$250) in any one case, and to contract therefor in its

## Oregon

discretion. The Commission may in its discretion authorize employers to furnish or provide, at the expense of the Commission and upon terms fixed by it, such transportation, attendance and accommodations; *provided, however*, that all such transportation, attendance and accommodations shall be at all times subject to the supervision and control of the Commission.

Section 24. If any employer shall default in any payment to the Accident Fund hereinbefore required, the amount of such payment shall be collected by an action at law in the name of the Commission as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of such default in any payment required hereunder, the defaulting employer shall not, if such default be after demand for payment, be entitled to any of the benefits of this Act, but shall be liable to the injured workman (or the husband, wife, child or dependent of such workman in case death result from the injury) as he would have been prior to the passage of this Act.

In case the recovery actually collected from the employer shall equal or exceed the compensation to which the claimant would be entitled under this Act, the claimant shall be entitled to nothing out of the Accident Fund; if such amount shall be less than the compensation herein provided, the Accident Fund shall contribute such deficiency. The person entitled to claim under this section shall have the choice, to be exercised before commencing suit against such defaulting employer, of proceeding by suit against such employer or of taking under this Act. If such person shall elect to take under this Act, the cause of action shall be assigned to the Commission for the benefit of the Accident Fund. In any suit brought upon such cause of action the defenses withdrawn by section 15 hereof from employers electing not to contribute hereunder shall be inadmissible. Any such cause of action assigned to the Commission may be prosecuted or compromised by it in its discretion. Any compromise by an individual claimant under this section which would result in a deficiency to be made good out of the Accident Fund may be made only upon the written approval of the Commission.

Section 25. If any workman shall sustain an injury which the Commission shall determine to have been caused in whole or in

## Oregon

part by the failure of his employer to install or maintain any safety appliance, device or safeguard required by statute, such workman, or, if such injury result in death, then the husband, wife, child or dependent of such workman, shall have the same rights against such employer as in the case of an employer defaulting in payments due hereunder, and all of the provisions of the preceding section shall apply with respect to such claim, provided in case the workman or his beneficiary proceeds against the employer he shall have no claim against the Accident Fund.

Section 26. No moneys payable on account of injuries or death hereunder shall be subject to assignment prior to the receipt thereof by the beneficiary entitled thereto, nor shall the same pass by operation of law. All moneys paid or payable hereunder and the right to receive the same shall be exempt from seizure on execution, attachment or garnishment, or by the process of any court.

Section 27. (a) Where a workman is entitled to compensation under this act he shall file with the Commission his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act, and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the Commission, without charge to the workman.

(b) Where death results from injury, the parties entitled to compensation under this Act, or some one in their behalf, shall make application for the same to the Commission, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this Act; certificates of attending physician, if any, and such other proof as required by the rules of the commission.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right accrued.

Section 28. Any workman entitled to receive compensation



under this Act is required, if requested by the Commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the Commission. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Section 29. Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the Commission, and also to any local representative of the Commission. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.
2. Whether the accident arose out of or in the course of the injured person's employment.
3. Any other matters the rules and regulations of the Commission may prescribe.

Section 30. The books, records and payrolls of the employer pertinent to the administration of this Act shall always be open to inspection by the Commission or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the Commission and its management under this Act. Refusal on the part of the employer to report accidents or to submit said books, records and payroll for such inspection to any member of the Commission, or any assistant presenting written authority from the Commission, shall subject the offending employer to a penalty of one hundred dollars (\$100) for each offense, to be collected by civil action in the name of the State and paid into the Accident Fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Section 31. Any employer and his workman engaged in works other than those defined in section 13 hereof may accept the provisions of this Act and become subject thereto and entitled to the benefits thereof by filing with the Commission their written election to that effect.

Section 32. Any employer, workman, beneficiary or person

## Oregon

feeling aggrieved by any decision of the Commission affecting his interests under this Act may have the same reviewed by a proceeding in the nature of an appeal and initiated in the circuit court of the county in which the accident occurred, or in which he resides, and such appeal shall have precedence over all other cases except criminal cases, and the court shall determine whether the Commission has justly considered all the facts concerning injury, whether it has exceeded the powers granted it by this Act, whether it has misconstrued the law and facts applicable in the case decided. If the court shall determine that the Commission has acted within its powers and has correctly construed the law and facts the decision of the Commission shall be confirmed; otherwise, it shall be reversed or modified. Upon the hearing of such an appeal the court in its discretion may submit to a jury any question of fact involved in such an appeal. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the Commission within thirty days following the rendition of the decision appealed from and actual communication thereof to the person affected thereby. No bond shall be required except that an appeal by the employer from a decision of the Commission under Section 25 shall be ineffectual unless within five days following the service of notice thereof a bond with surety satisfactory to the court shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. If the decision of the Commission shall be reversed or modified the fees of the medical and other witnesses and the costs shall be paid out of the industrial accident fund if the industrial accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the circuit court as in other civil cases. The Attorney-General shall be the legal adviser of the Commission and shall represent it in all proceedings whenever so required by any of the commissioners. In all court proceedings under or pursuant to this Act the decision of the Commission shall be *prima facie* correct and the burden of proof shall be upon the party attacking same.

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Oregon

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Section 33. Disbursement out of the funds shall be made only upon warrants drawn by the Secretary of State upon vouchers therefor transmitted to him by the Commission and audited by him. The State Treasurer shall, to such extent as shall appear to him to be advisable, keep the moneys of the unsegregated portion of the accident Fund invested at interest in the class of securities authorized for the investment by banks of savings deposits under the laws of this state. The State Treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the Accident Fund and the Segregated Accident fund.

Section 34. Nothing in this Act shall be deemed to abrogate the rights of the employé under the present employers' liability law, in all cases where the employé, under this act, is given the right to bring suit against his employer for an injury.

Filed in the office of the Secretary of State, Feb. 25, 1913.

# **RHODE ISLAND**

(As am'd to April 30, 1913)

## **ARTICLE I**

### **ABROGATION OF REMEDIES AND DEFENSES**

SECTION 1. In an action to recover damages for personal injury sustained by accident by an employé arising out of and in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense: (a) That the employé was negligent; (b) That the injury was caused by the negligence of a fellow employé; (c) That the employé has assumed the risk of the injury.

Sec. 2. The provisions of this act shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employés engaged in domestic service or agriculture.

Sec. 3. The provisions of this act shall not apply to employers who employ five or less workmen or operatives regularly in the same business, but such employers may, by complying with the provisions of Section 5 of this article become subject to the provisions of this act.

Sec. 4. The provisions of Section 1 of this article shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries sustained by employés of an employer who has elected to become subject to the provisions of this act, as provided in Section 5 of this article.

Sec. 5. Such election on the part of the employer shall be made by filing with the commissioner of industrial statistics a written statement to the effect that he accepts the provisions of this act, and by giving reasonable notice of such election to his workmen, by posting and keeping continuously posted copies of such statement in conspicuous places about the place where his workmen are employed, the filing of which statement and the giving of which notice shall operate to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such state-

ment, and thereafter, without further act on his part, for successive terms of one year, each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with said commissioner a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act and shall give reasonable notice to his workmen as above provided. Blank forms of election and withdrawal as herein provided, shall be furnished by said commissioner.

Sec. 6. An employé of an employer who shall have elected to become subject to the provisions of this act as provided in Section 5 of this article shall be held to have waived his right of action at common law to recover damages for personal injuries, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within ten days thereafter have filed a copy thereof with the commissioner of industrial statistics, or, if the contract of hire was made before the employer so elected, if the employé shall not have given the said notice and filed the same with said commissioner within ten days after notice by the employer, as above provided, of such election; and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employé shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commissioner a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employé except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employés are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law to recover damages for personal

## Rhode Island

injuries. Any employé, or the parent or guardian of any minor employé, who has given notice to the employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

Sec. 7. The right to compensation for an injury, and the remedy therefor granted by this act, shall be in lieu of all rights and remedies as to such injury now existing, either at common law or otherwise; and such rights and remedies shall not accrue to employés entitled to compensation under this act while it is in effect.

## ARTICLE II

## PAYMENTS

Section 1. If an employé who has not given notice of his claim of common law rights of action or who has given such notice and has waived the same, as provided in Section 6 of Article I, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation, as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

Sec. 2. No compensation shall be allowed for the injury or death of an employé where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty.

Sec. 3. Contingent fees of attorneys for services under this act shall be subject to the approval of the superior court.

Sec. 4. No compensation except as provided by Section 12 of this Article shall be paid under this act for any injury which does not incapacitate the employé for a period of at least two weeks from earning full wages, but, if such incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

Sec. 5. During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services, and medicines when they are needed, the amount of the charge

for such services to be fixed, in case of the failure of the employer and employé to agree, by the superior court.

Sec. 6. If death results from the injury, the employer shall pay the dependents of the employé wholly dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury: *Provided, however*, that, if the dependent of the employé to whom the compensation shall be payable upon his death is the widow of such employé, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employé, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employé leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employé to such partial dependents bears to the annual earnings of the deceased at the time of injury. When weekly payments have been made to an injured employé before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury: *Provided, however*, that, if the deceased leaves no dependents at the time of the injury, the employer shall not be liable to pay compensation under this act except as specifically provided in Section 9 of this article.

Sec. 7. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she lives or upon whom she is dependent at the time of his death.

(b) A husband upon a wife with whom he lives or upon whom he is dependent at the time of her death.

## Rhode Island

(c) A child or children, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living or upon whom he or they are dependent at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation hereunder shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency.

Sec. 8. No person shall be considered a dependent unless he is a member of the employé's family or next of kin, wholly or partly dependent upon the wages, earnings or salary of the employé for support at the time of the injury.

Sec. 9. If the employé dies as a result of the injury leaving no dependents at the time of the injury, the employer shall pay, in addition to any compensation provided for in this act the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

Sec. 10. While the incapacity for work resulting from the injury is total, the employer shall pay the injured employé a weekly compensation equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury. In the following cases it shall, for the purposes of this section, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine, resulting in per-



manent and complete paralysis of the legs or arms, and an injury to the skull, resulting in incurable imbecility or insanity.

Sec. 11. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employé a weekly compensation equal to one-half the difference between his average weekly wages, earnings, or salary, before the injury and the average weekly wages, earnings or salary which he is able to earn thereafter, but not more than ten dollars a week; and, in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

Sec. 12. In case of the following specified injuries the amounts named in this section shall be paid in addition to all other compensation provided for in this act:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes, one-half of the average weekly wages, earnings, or salary, of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or the entire and irrecoverable loss of the sight of either eye, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

Sec. 13. The "average weekly wages, earnings, or salary" of an injured employé shall be computed as follows:

(a) If the injured employé has worked in the same employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole

## Rhode Island

of the year immediately preceding his injury, his "average weekly wages" shall be three hundred times the average daily wages, earnings, or salary, which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two. But where the employé is employed concurrently by two or more employers, for one of whom he works at one time and for another of whom he works at another time, his "average weekly wages" shall be computed as if the wages, earnings, or salary received by him from all such employers were wages, earnings, or salary earned in the employment of the employer for whom he was working at the time of the accident.

(b) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his "average weekly wages" shall be three hundred times the average daily wages, earnings, or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment, in the same or a neighboring place, has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment divided by fifty-two.

(c) In cases where the foregoing methods of arriving at the "average weekly wages, earnings, or salary" of the injured employé cannot reasonably and fairly be applied, such "average weekly wages, earnings, or salary" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time.

(d) Where the employer has been accustomed to pay to the employé a sum to cover any special expense incurred by said employé by the nature of his employment, the sum so paid shall not be reckoned as part of the employé's wages, earnings or salary.

(e) The fact that an employé has suffered a previous injury,

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Rhode Island

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or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of, the previous provisions of this section.

Sec. 14. No savings or insurance of the injured employé, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act. Any employer who shall refuse or delay payment under this act on account of the receipt by any injured employé of such savings, insurance or benefits, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment not exceeding one year or both.

Sec. 15. The compensation payable under this act in case of the death of the injured employé shall be paid to his legal representatives; or, if he has no legal representative, to his dependents entitled thereto, or, if he leaves no such dependents, to the person to whom the expenses for the burial and last sickness are due. If the payment is made to the legal representative of the deceased employé, it shall be paid by him to the dependents or other persons entitled thereto under this act. All payments of compensation under this act shall cease upon the death of the employé from a cause other than or not induced by the injury for which he is receiving compensation.

Sec. 16. In case an injured employé is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any right, privilege or election accrues to him or them under this act, his conservator, guardian, or next friend may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time in this act provided shall run so long as such incompetent or minor has no conservator or guardian.

## Rhode Island

Sec. 17. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of the death of the employé, or in the event of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

Sec. 18. Such notice shall be in writing and shall state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative, or by a dependent, or by a person in behalf of either.

Sec. 19. Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, if the employer is a corporation, upon any officer or agent upon whom process may be served, by delivering the same to the person on whom it is to be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or, in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute completed service.

Sec. 20. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to the proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake or unforeseen cause.

Sec. 21. The employé shall, after an injury, at reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer. The employé

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Rhode Island

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shall have the right to have a physician, provided and paid for by himself, present at such examination.

Any justice of the superior court may, at any time after an injury, on the petition of the employer or employé, appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner as fixed by the justice appointing him shall be paid by the party moving for such appointment.

Such medical examiner being first duly sworn to the faithful performance of his duties before the justice appointing him or clerk of the court shall thereupon, and as often as necessary, examine such injured employé in order to determine the nature, extent, and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employé in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of Article III of this act, and such report shall be produced in evidence in any hearing or proceeding to determine the amount of compensation due such employé under the provisions of this act. If such employé refuses to submit himself for any examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

Sec. 22. No agreement by an employé, except as provided in Article IV, to waive his rights to compensation under this act shall be valid.

Sec. 23. No claims for compensation under this act, or under any alternative scheme permitted by Article IV of this act, shall be assignable, or subject to attachment, or liable in any way for any debts.

Sec. 24. The claim for compensation under this act, or under any alternative scheme permitted by Article IV of this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state; but nothing herein shall be construed as impairing any lien which the employé may have acquired.

Sec. 25. In case payments have continued for not less than six months either party may, upon due notice to the other party,

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Rhode Island

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petition the superior court for an order commuting the future payments to a lump sum. Such petition shall be considered by the superior court and may be summarily granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered the superior court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon paying such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.

## ARTICLE III

## PROCEDURE

SECTION 1. If the employer and the employé reach an agreement in regard to compensation under this act, a memorandum of such agreement signed by the parties shall be filed in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of this article. The clerk shall forthwith docket the same in a book kept for that purpose, and shall thereupon present said agreement to a justice of the superior court, and when approved by the justice the agreement shall be enforceable by said superior court by any suitable process, including executions against goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the provisions of said agreement. No appeal shall lie from the agreement thus approved unless upon allegation that such agreement had been procured by fraud or coercion. Such

agreement shall be approved by the justice only when its terms conform to the provisions of this act.

When death has resulted from the injury and the dependents of the deceased employé entitled to compensation are, or the apportionment thereof among them is, in dispute, such agreement may relate only to the amount of compensation.

Sec. 2. If the employer and employé fail to reach an agreement in regard to compensation under this act, either employer or employé, and when death has resulted from the injury and the dependents of the deceased employé entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest may file in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of this article, a petition in the nature of a petition in equity setting forth the names and residences of the parties, the facts relating to employment at the time of the injury, the cause, extent and character of the injury, the amount of wages, earnings, or salary received at the time of the injury, and the knowledge of the employer or notice of the occurrence of the injury, and such other facts as may be necessary and proper for the information of the court, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

Sec. 3. Within four days after the filing of the petition, a copy thereof, attested by the petitioner or his attorney, shall be served upon the respondent in the same manner as a writ of summons in a civil action.

Sec. 4. Within ten days after the filing of the petition, the respondent shall file an answer to said petition, together with a copy thereof for the use of the petitioner, which shall state the claims of the respondent with reference to the matter in dispute as disclosed by the petition. No pleadings other than petition and answer shall be required to bring the cause to a hearing for final determination. The superior court may grant further time for filing the answer and allow amendments of said petition and answer at any stage of the proceedings. If the respondent does not file an answer, the cause shall proceed without formal default or decree pro confesso. If the respondent be an infant or person under disability, the superior court shall appoint a guardian ad litem for such infant or person under disability. Such guardian

ad litem may be appointed on any court day after service of the copy referred to in Section 3 of this article, upon motion of any party after notice given as required for motions made in the superior court, and opportunity to said infant or person under disability to be heard in regard to the choice of such guardian ad litem. The guardian ad litem so appointed shall file the answer required by this section.

Sec. 5. The petition shall be in order for assignment for hearing on the motion day which occurs next after fifteen days from the filing of the petition. Upon the days upon which said petition shall be in order for hearing it shall take precedence of other cases upon the calendar, except cases for tenements let or held at will or by sufferance.

Sec. 6. The justice to whom said petition shall be referred by the court shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. His decision shall be filed in writing with the clerk, and a decree shall be entered thereon. Such decree shall be enforceable by said superior court by any suitable process, including executions against goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the provisions of said decree. Such decree shall contain findings of fact, which, in the absence of fraud, shall be conclusive. The superior court may award as costs the actual expenditures, or such part thereof as to the court shall seem meet, but not including counsel fees, and shall include such costs in its decree. The superior court may refuse to award costs, and no costs shall be awarded against an infant or person under disability or against a guardian ad litem.

Sec. 7. Any person aggrieved by the final decree of the superior court under this act may appeal to the supreme court upon any question of law or equity decided adversely to the appellant by said final decree or by any proceeding or ruling prior thereto appearing of record, the appellant having first had his objections noted to any adverse rulings made during the progress of the trial at the time such rulings were made, if made in open court and not otherwise of record.

The appellant shall take the following steps:

(a) Within ten days after entry of said final decree he shall



file a claim of appeal and, if a transcript of the testimony and rulings or any part thereof be desired, a written request therefor.

(b) Within such time as the justice of the superior court who heard the petition, or, in case of his inability to act from any cause within such time as any other justice thereof shall fix, whether by original fixing of the time, or by extension thereof, or by a new fixing after any expiration thereof, the appellant shall file reasons of appeal stating specifically all the questions of law or equity decided adversely to him which he desires to include in his reasons of appeal, together with a transcript of as much of the testimony and rulings as may be required. The supreme court may allow amendments of said reasons of appeal. Upon the filing of said reasons of appeal and transcript, the clerk of the superior court shall present the transcript to the justice who heard the cause for allowance. The justice after hearing and examination, shall restore the transcript to the files of the clerk with a certificate of his action thereon made within twenty days after filing the transcript, unless the twentieth day shall fall in vacation, in which event the certificate may be filed at any time before the first Monday in the following month of October.

If the transcript be not allowed by the justice who heard the cause within the time prescribed, or objection to his allowance be made by any party, the correctness of the transcript may be determined by the supreme court by petition filed within thirty days after filing the transcript, unless the thirtieth day shall fall in vacation, in which event the correctness of the transcript may be determined by petition, filed on or before the tenth day after the first Monday in the following month of October. In all other respects than in time of filing the same course shall be followed as provided in Section 21 of Chapter 298 of the General Laws for establishing the truth of exceptions.

Sec. 8. Upon the restoration of the transcript to the files, or, if there be no transcript, then upon the filing of the reasons of appeal, the clerk of the superior court shall certify the cause and all papers to the supreme court.

Sec. 9. The claim of an appeal shall suspend the operation of the decree appealed from, but, in case of default in taking the procedure required, such suspension shall cease, and the superior court upon motion of any party shall proceed as if no claim of

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Rhode Island

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appeal had been made, unless it be made to appear to the superior court that the default no longer exists.

Sec. 10. Any court day in the supreme court shall be a motion day for the purpose of hearing a motion to assign the appeal for hearing.

Sec. 11. The supreme court after hearing any appeal shall determine the same, and affirm, reverse or modify the decree appealed from, and may itself take, or cause to be taken by the superior court, such further proceedings as shall seem just. If a new decree shall be necessary, it shall be framed by the supreme court for entry by the superior court. Thereupon the cause shall be remanded to the superior court for such further proceedings as shall be required.

Sec. 12. No process for the execution of a final decree of the superior court from which an appeal may be taken shall issue until the expiration of ten days after the entry thereof, unless all parties against whom such decree is made waive an appeal by a writing filed with the clerk or by causing an entry thereof to be made on the docket.

Sec. 13. If, in the course of the proceedings in any cause, any question of law shall arise which in the opinion of the superior court is of such doubt and importance, and so affects the merits of the controversy, that it ought to be determined by the supreme court before further proceedings, the superior court may certify such question to the supreme court for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties.

Sec. 14. At any time before the expiration of two years from the date of the approval of an agreement, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings or decree may be from time to time reviewed by the superior court upon the application of either party, after due notice to the other party, upon the ground that the incapacity of the injured employé has subsequently ended, increased, or diminished. Upon such review the court may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the jus-

## Rhode Island

tice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the court upon such review shall be served on the parties and filed with the clerk of the court having jurisdiction, in like time and manner and subject to like disposition as in the case of original decrees: *Provided*, that an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the superior court in the same manner as original agreements in regard to compensation are required to be approved by the provisions of Section 1 of Article III of this act.

Sec. 15. The superior court shall prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings under this act; and in making such orders said court shall not be bound by the provisions of the General Laws relating to practice. In the absence of such orders, special orders shall be made in each case.

Sec. 16. Proceedings shall be brought either in the county where the accident occurred or in the county where the employer or employé lives or has a usual place of business. The court where any proceeding is brought shall have power to grant a change of venue.

Sec. 17. No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

Sec. 18. An employé's claim for compensation under this act shall be barred unless an agreement or a petition, as provided in this article, shall be filed within two years after the occurrence of the injury, or, in case of the death of the employé, or, in the event of his physical or mental incapacity, within two years after the death of the employé or the removal of such physical or mental incapacity.

Sec. 19. If an employé receiving a weekly payment under this act shall cease to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the superior court, upon the application of either party, may, in its discretion, having regard to the welfare of the employé and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

## Rhode Island

Sec. 20. All questions arising under this act, if not settled by agreement of the parties interested therein, shall, except as otherwise herein provided, be determined by the superior court.

Sec. 21. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employé may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to receive both damages and compensation; and if the employé has been paid compensation under this act, the person by whom the compensation was paid shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and, to the extent of such indemnity, shall be subrogated to the rights of the employé to recover damages therefor.

Sec. 22. The proceedings in all cases under this act shall be deemed matters of record; but the same shall not be required to be recorded at large, but shall be filed and numbered in the office of the clerk of the superior court, and a docket only, or short memorandum thereof, shall be kept by said clerk, in books provided for that purpose.

## ARTICLE IV

## ALTERNATIVE SCHEMES PERMITTED

SECTION 1. Any employer may enter into an agreement with his employés in any employment to which this act applies to provide a scheme of compensation, benefit, or insurance, in lieu of the compensation provided for in this act, subject to the approval of the superior court. Such approval shall be granted only on condition that the scheme proposed provides as great benefits as those provided by this act; and, if the scheme provides for contributions by employés, it shall confer additional benefits at least equivalent to these contributions. If such a scheme meets with the approval of said court, the clerk shall issue a certificate enabling the employer to contract with any or all of his employés in employments to which this act applies to substitute such scheme for the provisions of this act for a period of not more than five years.

Sec. 2. No scheme which provides for contributing by employes shall be so certified which does not contain suitable provisions for the equitable distribution of any money or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already incurred, if and when such certificate is revoked or the scheme otherwise terminated.

Sec. 3. If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or any other valid and substantial reason therefor exists, the superior court, on reasonable notice to the interested parties, shall revoke the certificate and the scheme shall thereby be terminated.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

SECTION 1. In this act, unless the context otherwise requires:

(a) "Employer" includes any person, copartnership, corporation or voluntary association, and the legal representative of a deceased employer.

(b) "Employé" means any person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer, and whose remuneration does not exceed eighteen hundred dollars a year. It does not include a person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business. Any reference to an employé who has been injured shall, where the employé is dead, include a reference to his dependents as hereinbefore defined, or to his legal representative, or, where he is a minor, or incompetent, to his conservator or guardian.

Sec. 2. Nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

Sec. 3. The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

Sec. 4. If any section of this act shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the validity of any other portion thereof which can be given reasonable effect without the part so declared unconstitutional or invalid.

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Rhode Island

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Sec. 5. In all cases where an employer and employé shall have elected to become subject to the provisions of this act, the provisions of Section 14 of Chapter 283 of the General Laws, shall not apply while this act is in effect.

Sec. 6. All acts and parts of acts inconsistent herewith are hereby repealed.

Sec. 7. This act may be cited as "Workmen's Compensation Act."

Sec. 8. This act shall take effect on the first day of October, nineteen hundred and twelve.

Amendments effective April 30, 1913.

## TEXAS

(L. 1913, c. 0000.)

AN ACT relating to employers' liability and providing for the compensation of certain employes and their representatives and beneficiaries, for personal injuries sustained in the course of employment, and for deaths resulting from such injuries, and to provide and determine in what cases compensation shall be paid, and to make the payment thereof the more certain and prompt by the creation of an insurance association to insure and guarantee such payments and of an industrial accident board for the investigation of claims and for the adjudication thereof for consenting parties, fixing the membership and powers of said board and its compensation and duties, and the method of its appointment, and the term of office of its members, and fixing also the powers, duties and liabilities of said insurance association and the extent of control over the same to be exercised by the Commissioner of Banking and Insurance, and providing also for the insurance of payments of compensation to employes by certain other insurance companies and organizations, and declaring an emergency.

*Be it enacted by the legislature of the state of Texas:*

### PART I

SECTION 1. In an action to recover damages for personal injuries sustained by an employe in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employe was guilty of contributory negligence; but in such event the damages shall be diminished in the proportion to the amount of negligence attributable to such employe, provided that no such employe who may be injured or killed shall be held to have been guilty of contributory negligence where the violation by such employer of any statute enacted for the safety of the employes contributed to the injury or death of such employe;

2. That the injury was caused by the negligence of a fellow employe;

## Texas

3. That the employé had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the wilful intention of the employé to bring about the injury.

4. Provided, however, in all such actions against an employer who is not an (a) subscriber as defined hereafter in this Act, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment.

Section 2. The provisions of this Act shall not apply to actions to recover damages for the personal injuries or for death resulting from personal injuries sustained by domestic servants, farm laborers, nor to the employés of any person, firm or corporation operating any railway as a common carrier, nor to laborers engaged in working for a cotton gin, nor to the employés of any person, firm or corporation having in his or their employ not more than five employés.

Section 3. The employés of a subscriber shall have no right of action against their employer for damages for personal injuries, and the representatives and beneficiaries of deceased employés shall have no right of action against such subscribing employers for damages for injuries resulting in death, but such employés and their representatives and beneficiaries shall look for compensation solely to the Texas Employés' Insurance Association as the same is hereinafter provided for; provided, that all compensation allowed under the succeeding sections herein, shall be exempt from garnishment, attachment and all other suits or claims, as are current wages now exempted by law.

Section 4. Employés whose employers are not at the time of injury subscribers to said association and the representatives and beneficiaries of deceased employés who at the time of injury were working for non-subscribing employers cannot participate in the benefits of said insurance association, but they shall be entitled to bring suit, and may recover judgment against such employers, or any of them, for all damages sustained by reason of any personal injury received in the course of employment, or by reason of death resulting from such injury, and the provisions of section one of this Act shall be applied in all such actions.

Section 5. Nothing in this Act shall be taken or held to pro-



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Texas

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hibit the recovery of exemplary damages by the surviving husband, wife and heirs, or such of them as there may be, of any deceased employé, whose death is occasioned by homicide, through the wilful act or omission or gross negligence of any person, firm or corporation, the employer of such employé at the time of the injury causing the death of the latter, and in all cases where exemplary damages are sought under this section, in case the injured party has already been awarded actual damages by the Board herein provided, said fact and said amount so received shall be made known to the Court or jury trying said cause for exemplary damages; and on the issue for exemplary damages he shall have the same defenses as under the existing law.

Section 6. No compensation shall be paid under this Act for an injury which does not incapacitate the employé for a period of at least one week from earning full wages, but if incapacity extends beyond one week, compensation shall begin on the eighth day after injury.

Section 7. During the first week of the injury the association shall furnish reasonable medical aid, hospital services, and medicines when needed, and if it does not furnish these immediately as and when needed, it shall repay all sums reasonably paid or incurred for same, provided, reasonable notice of injury shall be given to the said association, and this provision requiring notice shall apply to all subsequent sections of this Act providing for compensation.

Section 8. If death should result from the injury, the association hereinafter created, shall pay to the legal beneficiary of the deceased employé a weekly payment equal to 60 per cent of his average weekly wages, but not more than \$15 nor less than \$5.00 a week, for a period of three hundred and sixty weeks from the date of injury; provided, that the compensation herein provided for shall be distributed according to the law providing for the distribution of other property of deceased.

Section 9. If the deceased employé leaves no legal beneficiaries, or creditors the association shall pay all expenses incident to his last sickness, and in addition a funeral benefit not to exceed one hundred dollars; provided, where the deceased leaves no beneficiaries as provided herein, but leaves creditors, the association shall be liable to such creditors for an amount not exceeding the

## Texas

amount that would otherwise have been due beneficiaries, which amount paid shall not exceed amount due such creditor or creditors.

Section 10. While the incapacity for work resulting from the injury is total, the association shall pay the injured employé a compensation equal to 60 per cent of his average weekly wages but not more than fifteen dollars, nor less than \$5.00 a week, and in no case shall the period covered by such compensation be greater than four hundred weeks.

Section 11. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employé a weekly compensation equal to 60 per cent of the difference between his average weekly wages before the injury and the average weekly wages he is able to earn thereafter, but in no case to be more than \$15 a week; and the period covered by such compensation to be in no case greater than three hundred weeks.

Section 12. In case of the following specified injuries the amounts hereinafter named shall be paid by the association in addition to all other compensation;

(a) For the loss by severance of both hands at or above the wrists, or of both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one-tenth of the normal vision in both eyes, 60 per cent of the average weekly wages of the injured employé, but not more than fifteen dollars nor less than five dollars a week for a period of one hundred weeks. (b) For the loss by severance of either hand at or above the wrist, or either foot above the ankle, or the reduction to one-tenth of normal vision in either eye, 60 per cent of the average weekly wages of the injured employé, but not more than \$15 nor less than \$5 a week, for a period of fifty weeks. (c) For the loss by severance at or above the second joint of two or more fingers, including thumbs and toes, 60 per cent of the average weekly wages of the injured employé, but not more than \$15 nor less than \$5.00 a week, for a period of twenty-five weeks. (d) For the loss by severance of at least one joint of a finger, thumb or toe, 60 per cent of the average weekly wages of the injured employé, but not more than \$15.00 nor less than \$5.00 a week, for a period of twelve weeks.

Section 13. If an injured employé is mentally incompetent or is a minor at the time when any rights or privileges accrue to him

## Texas

under this Act, his guardian or next friend may in his behalf claim and exercise such rights and privileges.

Section 14. No agreement by an employé to waive his rights to compensation under this Act shall be valid.

Section 15. In cases where death or total permanent disability results from an injury, the liability of the association may be redeemed by payment of a lump sum by agreement of the parties thereto, subject to the approval of the "Industrial Accident Board" hereinafter created.

Section 16. In all cases of injury resulting in death, where such injury was received in the course of employment, cause of action shall survive.

## PART II

Section 1. There shall be an "Industrial Accident Board" consisting of three members, and the same is hereby created, to be appointed by the Governor, one of whom shall be designated as chairman, and the term of office shall be two years for members of the board.

Section 2. One member of the Industrial Accident Board shall be at the time of his appointment, an employer of labor in some industry or business covered by this Act; one shall be at the time of his appointment a wage earner employed in some industry or business covered by this Act, and the third member shall be, at the time of his appointment a practicing attorney of recognized ability, said member to act in the capacity of legal adviser to the board in addition to his other duties as a member thereof.

Section 3. The salaries and expenses of the Industrial Accident Board shall be paid by the State. The salary of the chairman shall be three thousand dollars a year, and the salaries of the other members of the board shall be two thousand and five hundred dollars a year each. The board may appoint a secretary at a salary of not more than two thousand dollars a year and may remove him at any time, furnishing him, upon demand with a statement of the cause of his removal. It shall also be allowed an annual sum not exceeding five thousand dollars a year, for clerical services, traveling and other necessary expenses. The Board shall be provided suitable offices in the capitol or some

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Texas

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other convenient building in the City of Austin, where its records shall be kept.

Section 4. The board may make rules not inconsistent with this Act, for carrying out and enforcing its provisions, and may require any employé claiming to have sustained injury, to submit himself for examination before such board or some one acting under its authority at some reasonable time and place within the State and as often as may be reasonably ordered by the board, to a physician or physicians authorized to practice under the laws of this State. If the employé requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. Refusal of the employé to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect of the period of suspension. Process and procedure shall be as summary as may be under this Act. The board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings or decisions of the board relating to disputed claims shall be based upon questions of fact, and in accord with the provisions of this Act.

Section 4-a. No proceedings for compensation for injury under this Act, shall be maintained unless a notice of the injury shall have been given to the Association or subscriber, as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employé, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

Section 5. All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise herein provided, be determined by the Industrial Accident Board. Any interested party who is not willing, and does not consent to abide by the final ruling and decision of said board on any disputed claims may sue on such claim or may require suit

## Texas

to be brought thereon in some court of competent jurisdiction, and the board shall proceed no further toward the adjustment of such claim; *Provided, however*, that whenever any such suit is brought, the rights and liabilities of the parties thereto shall be determined by the provisions of this Act, and the suit of the injured employé, or persons suing on account of the death of such employé, shall be against the association, if the employer of such injured or deceased employé is at the time of such injury or death a subscriber, as defined in this Act, in which case the recovery shall not exceed the maximum compensation allowed under the provisions of this Act, and the court shall determine the issues in such cause instead of said Board.

Section 6. If a subscriber enters into a contract, written or oral, with an independent contractor to do such subscriber's work, or if a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work was executed by employés immediately employed by the subscriber, be liable to pay compensation under this Act to such employés, the association shall pay to such employés any compensation which would be payable to them under this Act if the independent or sub-contractors were subscribers. The association shall, however, be entitled to recover indemnity from any other persons who would have been liable to such employés independently of this section, and if the association has paid compensation under the terms of this section, it may enforce in the name of the employés, or in its own name and for its own benefit the liability of such other persons.

This section shall not apply to independent or sub-contractors or any contract which is merely auxiliary and incidental to, and is no part of or process in, the trade or business carried on by the subscriber.

Section 7. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within eight days after the occurrence of an accident resulting in a personal injury to an employé, a report thereof shall be made in writing to the Industrial Accident Board on blanks to be procured from the board for that purpose. Upon the termination of the disability of the injured

Texas

employé, or if such disability extends beyond a period of sixty days, the employer shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employé, and shall state the date and hour of the accident, and the nature and cause of injury, and such other information as the Board may require. Any employer failing or refusing to make any such report within the time herein provided, or failing or refusing to give to said board any information demanded by said board relating to any injury to an employé which information is in the possession of, or could have been ascertained by the employer by the use of reasonable diligence shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand (\$1000) dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted by the Attorney General, or under his direction, either in the district court of Travis County, or in the county in which any defendant resides at the option of the said Attorney General.

PART III

Section 1. The "Texas Employers' Insurance Association" is hereby created a body corporate with the powers provided in this Act and with all the general corporate powers incident thereto.

Section 2. The Governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year, or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide.

Section 3. Until the first meeting of the subscribers, the board of directors shall have and exercise all of the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions of this Act, which shall be in effect until amended or repealed by the subscribers.

Section 4. The board of directors shall annually choose by ballot a President who shall be a member of the Board, a Secretary, a Treasurer and such other officers as the by-laws may provide.

Section 5. Seven or more of the directors shall constitute a

quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide.

Section 6. Any employer of labor in the State may become a subscriber excepting as provided in Part I, Section two of this Act.

Section 7. The board of directors shall, within thirty days of the subscription of twenty-five employers call the first meeting of the subscribers by a notice in writing, mailed to each subscriber at his residence or place of business not less than ten days before the date fixed for the meeting.

Section 8. In any meeting of the subscribers each subscriber shall have one vote, and if a subscriber has five hundred employés to whom the association is bound to pay compensation, he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employés to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right, or by right of proxy, more than ten votes.

Section 9. No policy shall be issued by the Association until not less than fifty employers have subscribed, who have not less than two thousand employers (employés) to whom the association may be bound to pay compensation.

Section 10. No policy shall be issued by the association until a list of the subscribers, with the number of employés of each; together with such other information as the Commissioner of Banking and Insurance may require, shall have been filed with the Department of Banking and Insurance, nor until the President and Secretary of the Association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with every subscriber that he will take the policies so subscribed for by him within thirty days of the granting of a license to the association by the Commissioner of Banking and Insurance to issue policies.

Section 11. If the number of subscribers falls below fifty, or the number of employés to whom the association may be bound to pay compensation falls below two thousand, no further policies shall be issued until other employers have subscribed, who, together, with existing subscribers; amount to not less than fifty, who have not less than two thousand employés to whom the

association may be bound to pay compensation said subscriptions to be subject to the provisions of the preceding section.

Section 12. Upon the filing of the certificates provided for in the two preceding sections the Commissioner of Banking and Insurance shall make such investigations as he may deem proper and if his findings warrant it, grant a license to the association to issue policies.

Section 13. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of hazard incident thereto. Subscribers within each group shall annually pay in cash such premiums as may be required to pay the compensation herein provided for the inquiries (injuries) which may occur in that year.

Section 14. The association may in its by-Laws and policies fix the mutual contingent liability of the subscribers for the payment of losses and expenses not provided for by its cash fund, but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

Section 15. If the association is not possessed of cash funds above its insured premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability. Every subscriber shall pay his proportional part of any assessment which may be levied by the Association, in accordance with the laws and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

Section 16. The Board of directors may, from time to time, by vote fix the amount to be paid as dividends upon the policies expiring during each year after retaining sums sufficient to pay all compensation which may be payable on account of injuries sustained and expenses incurred. All premiums, assessments and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of such group, but all the funds of the association and the contingent liability of all of the subscribers shall be available for the payment of any approved claim for compensation against the Association.

Section 17. Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the Commissioner



of Banking and Insurance and shall not take effect until approved by him after such investigation as he may deem proper and necessary.

Section 18. The Board of Directors shall make and enforce reasonable rules for the prevention of injuries on the premises of subscribers, and for this purpose the inspector of the Association shall have free access to all such premises during regular working hours. Any subscriber aggrieved by such rule or regulation may petition the Industrial Accident Board for a review, and it may affirm, amend or annul the rule or regulation.

Section 19. Every subscriber shall, as soon as he secures a policy give notice, in writing or print, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the Association.

Section 20. Every subscriber shall, after receiving a policy, give notice in writing or print, to all persons with whom he is about to enter into a contract of hire, that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall, on or before the day on which his policy expires, give notice to that effect in writing or print to all persons under contract of hire with him. In case of the renewal of his policy no notice shall be required under this Act. He shall file a copy of said notice with the Industrial Accident Board.

Section 21. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay any employé any damages on account of any personal injury sustained by such employé during the period of subscription, the association shall pay to the subscriber the full amount of the judgment and the cost assessed therewith, if the subscriber shall have given the association notice of the bringing of the action upon which the judgment was recovered, and an opportunity to appear and defend same.

Section 22. The corporate powers of the association shall not expire because of failure to issue policies or make insurance.

Section 23. The board of directors appointed by the Governor under the provisions of Part III, Section two of this Act, may incur such expenses in the performance of its duties as may be approved by the Governor; such expenses shall be paid by the State

## Texas

out of any funds not otherwise appropriated, not to exceed five thousand dollars.

## PART IV

Section 1. The following words and phrases, as used in this Act, shall, unless a different meaning is plainly required by the context, have the following meaning: "Employer," shall include the legal representatives of any original employer. "Employé" shall include every person in the service of another under any contract of hire, expressed or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of the employer. Any reference to any employé who has been injured shall when the employé is dead, also include the legal beneficiaries of such employé to whom compensation may be payable. "Average Weekly Wages" shall mean the earnings of the injured employé during the period of twelve calendar months immediately preceding the date of injury divided by fifty-two; but if the injured employé lost more than two weeks during such period, then the earnings for the remainder of the twelve calendar months shall be divided by the number of weeks remaining after time last (lost) has been deducted. When, by reason of the shortness of the time of the employment of the employé, it is impracticable to compute the average weekly wages as above defined, it shall be computed by the Industrial Accident Board in any manner which may seem just and fair to both parties. "Association" shall mean the "Texas Employés' Insurance Association," or any other insurance company authorized under this Act to insure the payment of compensation to injured employés, or to the beneficiaries of deceased employés. "Subscriber" shall mean any employer who has become a member of the Association by paying a year's premium in advance and received the receipt of the Association therefor, provided, that the association holds a license issued by the Commissioner of Banking and Insurance as provided for in Part III, Section twelve of this Act.

Section 2. Any insurance company, which term shall include mutual and reciprocal insurance companies lawfully transacting a liability or accident business within this State, shall have the same right to insure the liability to pay the compensation provided for

by Part one of this Act, and when such company issues a policy conditioned to pay such compensation the holder of such policy shall be regarded as a subscriber so far as applicable under this Act; and when such company insures such payment of compensation it shall be subject to the provisions of Parts one, two and four and of Sections 10, 17 and 21 of Part Three of this Act, and shall file with the Commissioner of Banking and Insurance its classification of premiums none of which shall take effect until the Commissioner of Banking and Insurance has approved same as adequate to the risks to which they respectively apply and not greater than charged by the association, and such company may have and exercise all of the rights and powers conferred by this Act on the Association created hereby but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty subscribers, who have not less than two thousand employes.

Section 3. Any subscriber who has paid his annual premium as provided in Section 1, Part four of this Act, but who ceases to be an employer after three months and before the expiration of one year, may by satisfactory proof of such fact made to the Industrial Accident Board as herein created be entitled to a refund of such portion of the annual premium so paid by him as the portion of the year in which he is not an employer bears to the whole year, provided that in no event shall more than three-fourths of the annual premium by any subscriber who claims the benefit of this refund, ever be refunded.

Section 4. Should any part of this Act be, for any reason held to be invalid or inoperative, no other part or parts shall be affected thereby, and if any exception to or limitation upon any general provision herein contained shall be held to be unconstitutional or invalid or ineffective the general provision shall nevertheless stand effective and valid as if it had been enacted without exception or limitation.

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Section 6. This Act shall take effect and be in force on and after the first day of September, Nineteen hundred and thirteen.

Section 7. There now being no adequate law on the Statutes to protect the rights of industrial employes who may be injured

Texas

in industrial accidents and the beneficiaries of such employés who may be killed in such accidents, creates an emergency and an imperative public necessity that the Constitutional rule requiring bills to be read on three several days be suspended and the same is hereby suspended and this Act shall take effect from and after its passage and it is so enacted.

WILL H. MAYES

*President of the Senate*

CHESTER H. TERRELL

*Speaker, House of Representatives.*

I hereby certify that Senate Bill No. 11 passed the Senate on March 8th, 1913, and on March 28th, 1913, the Senate adopted the Free Conference Committee report.

W. V. HOWERTON

*Secretary of the Senate*

I hereby certify that Senate Bill No. 11 passed the House with amendments on March 26, 1913, and on March 29, 1913, the House adopted the Free Conference Committee report.

W. R. LONG,

*Chief Clerk, House of Representatives.*

*Received in the executive office  
this 31 day of March A. D. 1913,  
at 10 o'clock and 20 minutes  
P. M.*

J. T. BOWMAN

*Private Secretary.*

Approved April 16, 1913

O. B. COLQUITT

*Governor*

*Received in department of state this  
16 day of April A. D. 1913 at 2  
o'clock and 45 minutes P. M.*

D. A. GREGG

*Acting Secretary State.*

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(SEAL)

## DEPARTMENT OF STATE

I, JOHN L. WORTHAM, Secretary of State of the State of Texas do hereby certify that the foregoing is a true copy of Senate Bill No. 11, passed at the regular session of the 33rd Legislature of the State of Texas, and approved by the Governor on April 16, 1913, with the endorsements thereon, as now appears on file in this Department.

IN TESTIMONY WHEREOF I have hereunto signed my name  
officially and caused to be im-  
pressed hereon the Seal of State  
at my office in the City of  
(SEAL OF STATE) Austin, Texas, this the 19th day  
of April, A. D. 1913.

JOHN L. WORTHAM,  
*Secretary of State.*

## WASHINGTON

(L. 1911, c. 74; as am'd by L. 1913, approved March 21, 1913)

AN ACT relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for violation thereof.

*Be it enacted by the Legislature of the State of Washington:*

### DECLARATION OF POLICE POWER

SECTION 1. The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The

## Washington

welfare of the State depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the State over such causes are hereby abolished, except as in this act provided.

## ENUMERATION OF EXTRA HAZARDOUS WORKS

Sec. 2. There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the State, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

## DEFINITIONS

SEC. 3. In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, inter-urban railroads, harbors, docks, canals; electric, steam or water power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this State in any extra hazardous work.

Workman means every person in this State, who, after Sep-



tember 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the State for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the pay roll at a salary or wage not less than the average salary or wage named in such pay roll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz.: invalid child over the age of sixteen years, daughter, between sixteen and eighteen years of age, father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by

Washington

treaty, aliens, other than father or mother, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

SCHEDULE OF CONTRIBUTION

Sec. 4. Inasmuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total pay roll for that year, to-wit (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

*Construction Work*

Tunnels; bridges; trestles; sub-aqueous works; ditches and canals (other than irrigation without blasting); dock excavation; fire escapes; sewers; house moving; house wrecking.....	.065
Iron, or steel frame structures or parts of structures.....	.080
Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads.....	.050
Steeple, towers or grain elevators, not metal framed; dry-docks without excavation; jetties; breakwaters; chimneys; marine railways; waterworks or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters.....	.050
Steam heating plants; tanks, water towers or windmills, not metal frames.....	.040
Shaft sinking.....	.060

## Washington

Concrete buildings; freight or passenger elevators; fire-proofing of buildings; galvanized iron or tin works; gas works, or systems; marble, stone or brick work; road making with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys	.050
Excavations not otherwise specified; blast furnaces	.040
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings	.035
Ship or boat building or wrecking with scaffolds; floating docks	.045
Carpenter work not otherwise specified	.035
Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified	.030
Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making	.020

*Operation (Including Repair Work) of*

(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks	.050
Electric light or power plants; interurban electric railroads not using third rail system; quarries	.040
Street railways, all employes; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries	.030
Mines, other than coal; steam heating or power plants	.025

Washington

Grain elevators; laundries; waterworks; paper or pulp mills; garbage works. . . . .	.020
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*Factories Using Power-Driven Machinery*

Stamping tin or metal. . . . .	.045
Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; wooden ware or wooden fibre ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra; creosoting works; pile treating works. . . . .	.025
Excelsior; iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware; peat fuel; brickettes. . . . .	.020
Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified. . . . .	.020
Cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified. . . . .	.015
Making jewelry, soap, tallow, lard, grease, condensed milk. . . . .	.015
Creameries; printing; electrotyping; photo-engraving; lithographing. . . . .	.015

*Miscellaneous Work*

Stevedoring; longshoring. . . . .	.030
Operating stock yards, with or without railroad entry; packing houses. . . . .	.025
Wharf operation; artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified. . . . .	.020
Theater stage employes. . . . .	.015
Fire works manufacturing. . . . .	.050
Powder works. . . . .	.100

The application of this act as between employers and workmen

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Washington

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shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the pay roll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual pay roll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated pay roll, an adjustment shall be made on or before February 1st of the following year in the manner above provided.

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: *Provided*, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund.

The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more or less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience.

It shall be unlawful for the employer to deduct or obtain any

## Washington

part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross misdemeanor. If, after this act shall have come into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

For the purposes of such payment and making good of deficit, the particular classes of industry shall be as follows:

## CONSTRUCTION WORK

Class 1. Tunnels; sewer; shaft sinking; drilling wells.

Class 2. Bridges; mill wrighting; trestles; steeples, towers or grain elevators not metal framed; tanks, water towers, wind-mills not metal framed.

Class 3. Sub-aqueous works; canal other than irrigation or docks with or without blasting; pile driving; jetties; breakwaters; marine railways.

Class 4. House moving; house wrecking; safe moving.

Class 5. Iron or steel frame structures or parts of structures; fire escapes; erecting fire proof doors or shutters; blast furnaces; concrete chimneys; freight or passenger elevators; fire proofing of buildings; galvanized iron or tin work; marble, stone or brick work; roof work; slate work; plumbing work; metal smoke stack or chimneys; advertising signs; ornamental metal work in build-

ings; carpenter work not otherwise specified; marble, stone or tile setting; mantel setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or foundations, glass setting; building hot houses; lathing; paper hanging; plastering; wooden stair building.

Class 6. Electric light and power plants or systems; telegraph or telephone systems; cable or electric railways with or without rock work or blasting; waterworks or systems; steam heating plants; gas works or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems.

Class 7. Steam railroads; logging railroads.

Class 8. Road making; street or other grading; concrete laying in street paving; asphalt laying.

Class 9. Ship or boat building with scaffolds; ship wrighting; ship or boat rigging; floating docks.

#### OPERATION (INCLUDING REPAIR WORK) OF

Class 10. Logging; saw mills; shingle mills; lath mills; masts and spars with or without machinery.

Class 12. Dredges; dry or floating docks.

Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.

Class 14. Street railways.

Class 15. Telegraph systems; telephone systems.

Class 16. Coal mines.

Class 17. Quarries; stone crushing; mines other than coal.

Class 18. Blast furnaces; smelters; rolling mills.

Class 19. Gas works.

Class 20. Steamboats; tugs; ferries.

Class 21. Grain elevators.

Class 22. Laundries.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

FACTORIES (USING POWER-DRIVEN MACHINERY)

Class 26. Stamping tin or metal.

Class 27. Bridge work; making steam shovels or dredges; tanks; water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage; staves; veneer; box packing cases; sash [,] door or blinds; barrel; keg; pail; basket; tub; wood ware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.

Class 30. Asphalt.

Class 31. Cement; stone with or without machinery; building material not otherwise specified.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

Class 34. Iron, steel, copper, zinc, brass or lead articles or wares; hardware; boiler works; foundries; machine shops not otherwise specified.

Class 35. Tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware.

Class 36. Peat fuel; brickettes.

Class 37. Breweries; bottling works.

Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

Class 39. Working in food stuffs, including oils, fruits, vegetables.

Class 40. Condensed milk; creameries.

Class 41. Printing, electrotyping; photo-engraving; engraving; lithographing; making jewelry.

Class 42. Stevedoring; longshoring; wharf operation.

Class 43. Stock yards; packing houses; making soap, tallow, lard, grease; tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

Class 45. Theatre stage employés.

Class 46. Fire works manufacturing; powder works.

Class 47. Creosoting works; pile treating works.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the pay roll of each occupation



if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards. If an employer besides employing workmen in extra hazardous employment shall also employ workmen in employment not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the pay roll the entire compensation received by every workman employed in extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

#### SCHEDULE OF AWARDS

SEC. 5. Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

#### COMPENSATION SCHEDULE

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed seventy-five dollars (\$75) in any case, and

(1) If the workman leaves a widow or invalid widower, a monthly payment of twenty dollars (\$20) shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive five dollars (\$5) per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed thirty-five dollars (\$35). Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly

## Washington

allowance, viz: the sum of two hundred forty dollars (\$240), but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife nor husband, but a child or children under the age of sixteen years, a monthly payment of ten dollars (\$10) shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars (\$35), and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed twenty dollars (\$20) per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty dollars (\$20) per month, for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent, but the total to all children shall not exceed the sum of thirty-five dollars (\$35) per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other conditions permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

## Washington

(1) If unmarried at the time of the injury, the sum of twenty dollars (\$20).

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of twenty-five dollars (\$25). If the husband is not an invalid, the monthly payment of twenty-five dollars (\$25) shall be reduced to fifteen dollars (\$15).

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars (\$5) for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars (\$35).

(c) If the injured workman die during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars (\$20) per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years, but if such child is or shall be without father or mother, such child shall receive ten dollars (\$10) per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars (\$35). Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2), and (3), of the foregoing subdivision (b) shall apply so long as the total disability shall continue, increased fifty per cent, for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent, of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the

## Washington

old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory a monthly payment of twenty dollars (\$20), to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars (\$4,000) but the total in no case to exceed the sum of four thousand dollars (\$4,000). The state treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance of overplus, shall revert to the accident fund. The state treasurer shall keep accurate account of all such investments of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of fifteen hundred dollars (\$1,500). The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act. •

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section, provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed four thousand dollars (\$4,000) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of twenty dollars (\$20) to a person thirty years of age is worth four thousand dollars (\$4,000), or, with the consent of the beneficiary, for a smaller sum.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred. (*As am'd by L. 1913, approved, March 21st, 1913.*)

#### INTENTIONAL INJURIES—STATUS OF MINORS

SEC. 6. If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act

## Washington

and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this State shall be deemed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

## CONVERSION INTO LUMP SUM PAYMENT

SEC. 7. In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed \$4,000.00), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of \$20.00 to a person thirty years of age is worth the sum of \$4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary.

## DEFAULTING EMPLOYERS

SEC. 8. If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the State as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman

in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the State for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the State may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would have a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

#### EMPLOYER'S RESPONSIBILITY FOR SAFEGUARD

SEC. 9. If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to 50 per cent of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the

## Washington

employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workman, the schedule of compensation provided in section 5 shall be reduced 10 per cent for the individual case of such workman.

## EXEMPTION OF AWARDS

SEC. 10. No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

## NONWAIVER OF ACT BY CONTRACT

SEC. 11. No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be *pro tanto* void.

## FILING CLAIM FOR COMPENSATION

Sec. 12. (a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which applica-



## Washington

tion must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstance warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

## MEDICAL EXAMINATION

SEC. 13. Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

## NOTICE OF ACCIDENT

SEC. 14. Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

## INSPECTION OF EMPLOYER'S BOOKS

SEC. 15. The books, records and pay rolls of the employer pertinent to the administration of this act shall always be open

## Washington

to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay roll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and pay rolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the State and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of misdemeanor.

## PENALTY FOR MISREPRESENTATION AS TO PAY ROLL

SEC. 16. Any employer who shall misrepresent to the department the amount of pay roll upon which the premium under this act is based shall be liable to the State in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the State under this section shall be enforced in a civil action in the name of the State. All sums collected under this section shall be paid into the accident fund.

## PUBLIC AND CONTRACT WORK

SEC. 17. Whenever the State, county or any municipal corporation shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the State, county or municipality. If said work is being done by contract, the pay roll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total pay roll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the State for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate

## Washington

amount of the payment. The provisions of this section shall apply to all extra hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total pay roll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the pay roll of the municipality under this act.

## INTERSTATE COMMERCE

SEC. 18. The provisions of this act shall apply to employers and workmen engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this State may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the pay roll of the workmen who accept as aforesaid.

## ELECTIVE ADOPTION OF ACT

SEC. 19. Any employer and his employes engaged in works not extra hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety

per cent of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

## COURT REVIEW

SEC. 20. Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interest under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision [1] of section numbered 5) in so far as such decision rests upon questions of fact, or of the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pur-

suant to this act the decision of the department shall be *prima facie* correct, and the burden of proof shall be upon the party attacking the same.

#### CREATION OF DEPARTMENT

SEC. 21. The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department. The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of State a statement of his reasons therefor. The commission shall select one of their members as chairman. The main office of the commission shall be at the state capitol, but branch offices may be established at other places in the State. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

#### SALARY OF COMMISSIONERS

SEC. 22. The salary of each of the commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

#### DEPUTIES AND ASSISTANTS

SEC. 23. The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed \$5,000.00 per month. They may employ one or more physicians in each county for the purpose of

## Washington

official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain an uniform form of pay roll.

## CONDUCT, MANAGEMENT AND SUPERVISION OF DEPARTMENT

SEC. 24. The commission shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.

2. Ascertain and establish the amounts to be paid into and out of the accident fund.

3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.

5. Issue proper receipts for moneys received, and certificate for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

8. Make annual reports to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

## MEDICAL WITNESS

SEC. 25. Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the prog-

## Washington

ress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

## DISBURSEMENT OF FUNDS

SEC. 26. Disbursement out of the funds shall be made only upon warrants drawn by the State auditor upon vouchers therefor transmitted to him by the department and audited by him. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The state treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the state treasurer.

## TEST OF INVALIDITY OF ACT

SEC. 27. If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the

## Washington

lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman, shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

## STATUTE OF LIMITATIONS SAVED

SEC. 28. If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

## APPROPRIATIONS

SEC. 29. There is hereby appropriated out of the state treasury the sum of one hundred and fifty thousand dollars, or so much



## Washington

thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of \$1,500,000.00, or so much thereof as shall be necessary for the purposes of this act.

## SAFEGUARD REGULATIONS PRESERVED

SEC. 30. Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accident in extra hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9 and 10 of the act approved March 6, 1905, entitled: "An act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled 'An act providing for the protection of employes in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

## DISTRIBUTION OF FUNDS IN CASE OF REPEAL

SEC. 31. If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

## SAVING CLAUSE

SEC. 32. This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

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Washington

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Passed the House February 23, 1911.

Passed the Senate March 7, 1911.

Approved by the Governor March 14, 1911.

**Appropriation Act of 1913**

SECTION 1. That the sum of four million dollars (\$4,000,000) or so much thereof as may be necessary, is hereby appropriated from the accident fund created by chapter 74 of the Laws of 1911 to be used in paying awards made by the Industrial Insurance Department, and in making other expenditures to which said fund may be applicable under the provisions of said chapter.

*(Approved March 17, 1913; in effect April 1, 1913.)*

## WEST VIRGINIA

(L. 1913, c. 000; House Bill No. 9)

Passed Feb. 21, 1913. Approved by Governor Feb. 22, 1913.  
In effect ninety days after passage.

AN ACT to provide for the administration of a workmen's compensation fund by the public service commission and to define the powers, duties and liabilities of said commission in respect of said fund, and to provide a method of compensation for employes that may be injured, or the dependents of those killed in the course of their employment, from said fund to be raised and paid into the hands of the state treasurer as herein set forth; and to define and fix the rights of employes and employers; and to define the defenses that may be made by employers in actions for damages arising from death and personal injury; and to provide a method of raising said fund to meet the disbursements that may be ordered to be made under this act, and also to provide for the payment of a proportion of the salaries and expenses of said commission and its employes, and for appeals from the rulings of said commission; and for defining the classes of employers and employes who may bring themselves under this act; and also defining those defenses that those employers not bringing themselves under this act may make in actions for damages arising from death of, or personal injury to, their employes.

*Be it enacted by the Legislature of West Virginia:*

SEC. 1. That the commission created by the act entitled, "an act to create a public service commission and to prescribe its power and duties, etc.," passed on the twenty-first day of February, one thousand nine hundred and thirteen, which commission, for the purpose of this act, shall be a body politic and corporate under the name prescribed by said act, and shall administer the workmen's compensation fund provided for in this act. The said commission, in the administration of said fund, shall be governed by the provisions of this act if there be conflict

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West Virginia

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between the same and the provisions of said act creating said commission.

Sec. 2. It is the intent of this act that the expenses of the administration of said fund, including a proportionate share of the salaries or other compensation of the members of said commission, and employes thereof, whose services are connected both with the regulation of public utilities and the administration of said fund, and all other joint expenses, be paid by the state, so that the fund created as hereinafter provided shall be applied solely to the payment of the benefits provided for in this act; and all expenses peculiar to the administration of this act, including the premium to be paid for the bond of the state treasurer required under this act, and salaries or other compensation, traveling and other expenses, of all officers or employes of the commission, whose services are devoted solely to the administration of this act, and all expenses for furniture, books, maps, stationery, appliances and property of all kinds acquired or used solely in connection with the administration of this act, shall be paid by the state; and a justly proportional part of the salaries or other compensation of the members of the commission and other officers and employes thereof who are jointly employed or used, and all expenses of such officers or employes, and all of the expenses for furniture, books, maps, stationery and appliances which are jointly employed or used, shall be paid by the state; and no expenses herein provided to be paid by the state shall be paid out of or charged to the fund to be raised for the expenses of the commission as provided in said act of February twenty-one, one thousand nine hundred and thirteen, creating said public service commission.

Sec. 3. The apportionment of salaries or other expenses of members and other officers of the commission, employes thereof, and other expenses hereinbefore mentioned, shall be made by the commission at the time of payment, and such apportionment shall be based upon the relative time spent in the service of, or in the relative use of the property or facilities devoted to, the two branches of the work of the commission, respectively. All payments shall be made by the state treasurer upon order or voucher approved and signed by the chairman or acting chairman and secretary of the commission, directed to the auditor

of the state, who shall draw his warrant therefor, and any such payment shall be charged to the fund provided by the said act of February twenty-one, one thousand nine hundred and thirteen, for the administration thereof, or to the appropriations which shall be made from time to time hereafter by the state for the administration of this act, or part to such fund and part to such appropriations as may be directed by the commission in each case.

SEC. 4. The commission shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its record. All proceedings of the commission shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered, and the award with respect thereto and of all salaries or other compensation paid or allowed to any employé of the commission or to any other person for services, and all voting shall be had by the calling of each member's name by the secretary, and each vote shall be recorded as cast.

Sec. 5. A majority of the commission shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full commission, so long as a majority remains. Any investigation, inquiries or hearings which the commission is authorized to hold, or undertake, may be held or undertaken by or before any one member of the commission, and every order made by a member thereof, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, shall be deemed to be the order of the commission.

Sec. 6. The commission shall keep and maintain its office at the seat of government, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps and other equipment. After due notice showing the time and place, the commission may hold hearings anywhere within the state.

Sec. 7. The commission may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation, which shall be

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West Virginia

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paid out of the state treasury. The members of the commission, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants that may be employed shall be entitled to receive from the state treasury their actual and necessary expenses while traveling on the business of the commission. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the commission.

Sec. 8. The commission shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the service thereof, in cases of accident and injury to employés, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the rights to benefits or compensation from the fund hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Sec. 9. All persons, firms and corporations regularly employing other persons for profit, or for the purpose of carrying on any form of industry in the state of West Virginia, are employers within the meaning of this act, and are subject to its provisions. All persons in the service of employers, as herein defined, and employed by them for the purpose of carrying on the industries in which they are engaged (persons casually employed excepted) are employés within the meaning of this act, and subject to the provisions thereof; *provided*, that this act shall not apply to employers of employés in domestic or agricultural service, to employés of any employer who are employed wholly without the state, nor shall a member of a firm of employers, or any officer of a corporation employer, including managers, superintendents and assistant managers and assistant superintendents be deemed an employ   within the meaning of this act.

Sec. 10. Every employer shall furnish the commission, upon request, all information required by it to carry out the purposes of this act. The commission or any member thereof, or any person employed by the commission for that purpose, shall have the right to examine under oath any employer or officer, agent or employ   thereof.

Sec. 11. Within thirty days from the organization of the commission, every employer subject to this act shall notify the commission of such fact. The commission shall prepare blank reports for the use of, and furnish the same to employers subject to this act, and every employer receiving from the commission any blank or blanks with direction for filling out and returning the same, shall return the same filled out so as to answer fully and correctly all pertinent questions therein propounded and if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commission within the period fixed by the commission for such return.

Sec. 12. Each member of the board, the secretary and every inspector or examiner appointed by the board shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas and compel that attendance of witnesses and the production of pertinent books, accounts, papers, records, documents and testimony.

Sec. 13. In case of failure, or refusal of any person to comply with the order of the commission, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the circuit judge of the county in which the person resides, on application of any member of the commission, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

Sec. 14. Each officer who serves such subpoena shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the commission or an inspector or an examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the circuit court, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the commission. No witness subpoenaed at the instance of

## West Virginia

a party other than the commission, or an inspector, shall be entitled to compensation from the state treasury unless the commission shall certify that his testimony was material to the matter investigated.

Sec. 15. In an investigation, the commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions as provided for transcripts in the circuit court.

Sec. 16. A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation, taken by a stenographer appointed by the commission, being certified and sworn to by such stenographer to be a true and correct transcript of the testimony in the investigation, or of a particular witness, or of a specific part thereof, or to be a correct transcript of the proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party upon payment of the fee therefor, as provided for transcripts in the circuit court.

Sec. 17. The commission shall prepare and furnish free of cost blank forms, and provide in its rules for their distribution so that the same may be readily available, of applications for benefits for compensation from the workmen's compensation fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks.

Sec. 18.<sup>1</sup> For the purposes of this act the following classification of the industries subject thereto is adopted:

(1) Coal mines, including their tipples, power, light, heating and ventilating plants, tramways, private tracks and sidings, and accessory and auxiliary plants working in or with by-products.

(2) Paint manufactories, oil refineries, oil and gas wells, including their pipe lines, storage, power or light plants, tramways, private tracks and sidings, and accessory and auxiliary plants working in or with by-products.



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West Virginia

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(3) Iron and steel mills, including blast furnaces, smelters, tube works, rolling mills, and their accessory and auxiliary plants, working in or with by-products, and plants generating power, light or heat and tramways, private tracks and sidings.

(4) Sheet and tin plate mills, including their accessory and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks or sidings.

(5) Foundries, machine shops, fire-arms factories, tool factories, car building and repairing, structural iron works, and working in or with iron or steel, not otherwise specified, where power driven machinery is used, together with their accessory and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(6) Stamped metal works, can factories, enamel iron works, and working in or with sheet iron or tin plate, not otherwise specified, where power driven machinery is used, together with their accessory and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(7) Logging, logging railroads and tramways, saw mills, including their accessory and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(8) Planing mills, wood pulp, cordage and paper mills, box factories, cooperage plants, furniture factories, woodenware or wood fibre ware manufactories, vehicle works of every kind, including their accessory and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(9) Glass houses of all kinds, including manufactories of tableware, bar goods, bottles, tumblers, lamps, glass light fixture parts, lamps, window and plate glass, potteries of all kinds, including tile, brick, terra cotta, fire clay, earthenware, porcelain, china and crockeryware using automatic machinery, together with accessory and auxiliary plants working in or with by-products, and plants generating light or heat, and tramways, private tracks and sidings.

## West Virginia

(9-a) Glass houses of all kinds, including manufactories of tableware, bar goods, bottles, tumblers, lamps, glass light fixture parts, lamps, window and plate glass, potteries of all kinds, including tile, brick, terra cotta, fire clay, earthenware, porcelain, china and crockeryware not using automatic machinery, together with accessory and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(10) Printing plants of all kinds, electrotyping, photo-engraving, engraving, lithographing, embossing, book binding, and accessory and auxiliary lines of work and manufacture.

(11) Woolen mills, knitting mills, cotton mills, carpet and rug mills, clothing manufactories of every kind and working in or with textiles not otherwise specified.

(12) Breweries, bottling works, canneries of fruits, vegetables, oils, fish, milk or meat, manufactories of preserves, jellies, ketchup, sauces, relishes, pickles, flour and feed mills, bakeries, confectioneries, drug and extract manufactories, tobacco, cigar and stogie and cigarette manufactories, in which power driven machinery is used.

(13) Slaughter and packing houses, stock yards, soap, tallow, lard and grease manufactories, tanneries, artificial ice, and refrigerating and cold storage plants, creameries, and carbon black factories, in which power driven machinery is used.

(14) Steam laundries, dyeing and cleaning plants, stamping, embossing and working with leather, shoe and harness manufactories, mattress and bedding factories, upholstering factories, manufacturers of rubber goods, and auxiliary and accessory lines of work and manufacture not otherwise specified.

(15) Steam and other railroads and transportation systems not otherwise specified.

(16) Street and interurban railways, whether propelled by electricity or other power.

(17) Telegraph and telephone plants and systems, electric light and power plants and systems, steam heat and power plants and systems, water works systems, gas works and systems, grain elevators, and all lighting, heating or power systems not otherwise specified.

(18) Quarries, stone crushers, gravel pits, mines, other than coal

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West Virginia

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mines, and working with asphalt, cement, stone or other building material not otherwise specified, power propelled ferries, sand diggers and other water craft.

(19) Such works, occupations and manufactories specified in the foregoing eighteen classifications as are operated without power driven machinery.

(20) Match factories, powder mills, fire-works factories, and work in which articles of an explosive nature are mixed or manufactured.

(21) Construction of tunnels, shafts, bridges, trestles, steeples, towers, grain elevators, tanks, water towers, wind mills, subaqueous works, iron or steel frame structures, or parts of structures, blast furnaces, smoke stacks, cupolas or chimneys more than fifty feet high, water works and systems, electric lights and power plants and systems, gas works and systems, installation of steam boilers, engines and dynamos, steam railroads, logging railroads, street railways and systems, boat building with scaffolds, floating docks, engineering works, structural work on buildings over three stories in height, not otherwise specified, and drilling of wells.

(22) Construction and installation of sewers, fire escapes, freight or passenger elevators, advertising signs, ornamental metal work on or in buildings, metal ceilings, plate or window glass, electrical wiring, stairways, buildings which require galvanized iron or tin work, marble, stone or brick work, roof work, slate work, plumbing work, carpenter work, electric work, installing automatic sprinklers, electric or fire alarm systems, heating or ventilating systems, or machinery not otherwise specified, covering steam pipes and boilers, road and street making, street or other grading, and structural work not otherwise specified.

(23) Such works or occupations not specified in the foregoing classifications in connection with which employer and employes shall voluntarily apply to the commission for the benefit and protection of this act.

And it shall be the duty of the commission to classify and place in one of the classes aforesaid any industries subject to this act not hereinbefore specifically mentioned. And the commission shall have the power on or before the first day of January of each year to reclassify the industries subject to this act or to create additional classifications with respect to their respective degrees

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West Virginia

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of hazard and determine the risk of the different classes and fix the rates of premium for each class, according to the risks of the same, sufficiently large to provide an adequate fund for the compensation provided for in this act, and to create a surplus sufficiently large to guarantee a workmen's compensation fund from year to year. The classification so determined and the rates of premium established shall be applicable for such year; *provided*, that the rate so fixed shall not exceed the maximum of one dollar on each one hundred dollars of the gross annual pay roll of each employer in any class; *provided, also*, that for the purpose of this act the pay of any employé employed partly within and partly without this state shall be deemed to be such proportion of the total pay for such employé as his service within this state bears to his service outside the same. A mine worker shall be deemed to be wholly employed in the state in which the tippie or principal mine entrance of the mine in or about which he works is situate.

The state shall pay the salaries of the members and employés of the commission, and all other expenses of the administration of the workmen's compensation fund upon order or voucher approved and signed by the chairman and secretary of the commission, directed to the auditor of the state, who shall draw his warrant therefor.

SEC. 19. The commission shall establish a workmen's compensation fund from premiums paid thereto by employers and employés as herein provided, for the benefit of employés of employers that have paid the premiums applicable to the classes to which they belong and for the benefit of the dependents of such employés, and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of said fund, not in conflict with the provisions of this act.

SEC. 20. The treasurer of the state shall be the custodian of the workmen's compensation fund, and all disbursements therefrom shall be paid by him upon order or voucher, approved and signed by the chairman and secretary of the commission, and directed to the auditor of the state, who shall draw his warrant therefor.

SEC. 21. The treasurer of the state shall give a separate and additional bond, in such amount as may be fixed by the governor, and with sureties to be approved by him, conditioned for the

faithful performance of his duties as custodian of the workmen's compensation fund herein provided for.

SEC. 22. Any employer subject to this act who shall elect to pay into the workmen's compensation fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute for the injury or death of any employé, however occurring, after such election and during any period in which such employer shall not be in default in the payment of such premiums; *provided*, the injured employé has remained in his service with notice that his employer has elected to pay into the workmen's compensation fund the premiums provided by this act. The continuation in the service of such employer with such notice shall be deemed a waiver by the employé of his right of action as aforesaid.

SEC. 23. Each employer electing to pay the premiums provided by this act into the workmen's compensation fund shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such election, and the same when so posted shall constitute sufficient notice to all his employées of the fact that he has made such election.

No employer or employé shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be *pro tanto* void.

SEC. 24. The application of this act as between employers and employées shall date from and include the first day of October, one thousand nine hundred and thirteen; and for the purpose of creating such workmen's compensation fund each employer subject to this act shall pay into the state treasury the premiums of liability based upon and being such a percentage of the pay roll of such employer as may have been determined and published by the commission and be then in effect. The premiums provided for in this act shall be paid by the employers to the treasurer of the state, and be contributed in the proportion of ninety per cent by the employers and ten per cent by the employées. The premiums shall be paid monthly on or before the twenty-fifth day of each month for the preceding month, and shall be the prescribed percentage of the total wages paid to all employées subject to the act for such preceding month. Each employer is authorized to deduct from the pay of his employées (excepting persons casually employed), for

## West Virginia

any month, ten per cent of the premium paid or to be paid for such month in proportion to the pay received by them respectively for such month, the proper percentage to be deducted from each installment of pay, whether paid monthly or more frequently, the minimum deduction from the earnings of each employé for any month or part thereof for which settlement is made to be five cents. Each employer shall give a receipt or statement to each employé showing the amount which has been deducted for the workmen's compensation fund, and shall file with the commission, on making his next payment to the fund, a sworn statement showing what per cent of said premium herein provided to be paid by the employés (disregarding fractions of a cent) had been deducted, and that no more than ten per cent (subject to the minimum requirement aforesaid) had been so deducted. The state treasurer shall issue his receipt for any sums paid him hereunder in duplicate, the original to be delivered to the person, firm or corporation paying the same and the duplicate to be filed with the commission. *Provided*, that in order to create a fund available upon the application of this act as aforesaid, on October first, one thousand nine hundred and thirteen, the payment for the months of October to December, one thousand nine hundred and thirteen, inclusive, shall be made on or before October first, one thousand nine hundred and thirteen, and be preliminarily based upon the pay roll of the operations of the first four months of the year one thousand nine hundred and thirteen. If any employer be found to have overpaid for such three months he may deduct such overpayment from the first monthly payments made to the fund; if any employer be found to have underpaid for such three months he shall pay the deficiency with the first monthly payment made by him after the end of said three months.

Sec. 25. The commission shall disburse the workmen's compensation fund to such employés (within the meaning of this act) of employers as have paid into said fund the premiums for the month in which the injury occurs applicable to the classes to which they belong, as shall have received injuries in this state in the course of and resulting from their employment, or to the dependents, if any, of such employés in case death has ensued according to the provisions hereinafter made.

Sec. 26. All employers subject to this act who shall not have

elected to pay into the workmen's compensation fund the premiums provided by this act, or having so elected, shall be in default in the payment of same, shall be liable to their employes (within the meaning of this act) for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of their employer, or any of the employer's officers, agents or employes, and also to the personal representatives of such employes where death results from such injuries, and in any action by any such employe or personal representative thereof such defendant shall not avail himself of the following common law defenses:

The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further shall not avail himself of any defense that the negligence in question was that of some one whose duties are prescribed by statute.

Sec. 27. The commission shall disburse and pay from the fund for such injury to such employes as may be entitled thereto hereunder such amounts for medical, nurse and hospital services and medicines as it may deem proper, not, however, in any case to exceed the sum of one hundred and fifty dollars in addition to such award to such employes, payment to be made to the employe, or to the persons who may have furnished the service and supplies, or to the persons who may have advanced payment for same, as to the commission shall deem proper; *provided*, that in case any injured employe be entitled, under contract connected with his employment or otherwise, to hospital or medical service without further charge to him, no payment shall be made out of the workmen's compensation fund for hospital or medical service.

Sec. 28. Notwithstanding anything hereinbefore or hereinafter contained, no employe or dependent of any employe shall be entitled to receive any sum from the workmen's compensation fund on account of any injury to or death of an employe caused by a self-inflicted injury, the wilful misconduct or the intoxication of such employe. If injury or death result to an employe from the deliberate intention of his employer to produce such injury or death, the employe, the widow, widower, child or dependent of the employe shall have the privilege to take under

this act, and also have cause of action against the employer as if this act had not been enacted, for any excess of damages over the amount received or receivable under this act

Sec. 29. In case death ensues from the injury, reasonable funeral expenses, not to exceed seventy-five dollars, shall be paid from the fund to the personal representative of the employé, or to such other person as shall have advanced the same, in addition to such award to the employé's dependents.

Sec. 30. No benefit shall be allowed for one week after the injury is received, except the disbursement provided for in sections twenty-seven and twenty-nine.

Sec. 31. In case of temporary or partial disability, the employé shall receive during the continuance thereof fifty per cent of the impairment of his earning capacity, not to exceed a maximum of eight dollars per week, nor to be less than a minimum of four dollars per week, for not to exceed a period of twenty-six weeks; *provided*, that if such partial disability consist of the loss of an arm or leg at or above the wrist in one case or the ankle in the other, or the loss of an eye, the period for which compensation shall be paid may be, but shall not exceed, one hundred and fifty-six weeks.

Sec. 32. In case of permanent total disability the award shall be fifty per cent of the average weekly wage, and shall continue until the death of such person so totally disabled, but not to exceed a maximum of six dollars per week nor to be less than a minimum of three dollars per week.

Sec. 33. In case the injury causes death within the period of ninety days, the benefits shall be in the amounts and to the persons following:

(1) If there be no parent or dependents, the disbursement from the workmen's compensation fund shall be limited to the expense provided for in sections twenty-seven and twenty-nine.

(2) If the deceased employé be under the age of twenty-one and unmarried and leave a dependent father or mother, the father, or if there be no father, the mother shall be entitled to a payment of fifty per cent of the average weekly wage, not exceeding six dollars per week, to continue until the employé would have been twenty-one years of age.

(3) Dependent, as used in this act, means a widow, invalid



## West Virginia

widower, child under the age at which he or she may be lawfully employed in any industry, invalid child over such age, father, mother, grandfather or grandmother, who at the time of the injury causing death is dependent in whole or in part for his or her support upon the earnings of the employé.

(4) If the deceased employé leave a widow or invalid widower the payment shall be twenty dollars per month until the death or remarriage of such widow or widower; and in addition five dollars per month for each child under the age at which he or she may be lawfully employed in any industry, to be paid until such child reaches such age; *provided*, that the total payment shall not exceed thirty-five dollars per month.

(5) If the deceased employé be an adult and there be no widow, widower or child under the age at which he or she may be lawfully employed in any industry, but there are wholly dependent persons at the time of death, the payment shall (except in the case named in clause two of this section) be fifty per cent of the average monthly support actually received from the employé during the preceding twelve months, and to continue for the remainder of the period between the date of death and six years after the date of injury, and not to amount to more than a maximum of twenty dollars per month.

(6) If there be no widow, widower, or child under the age at which he or she may be lawfully employed in any industry, or dependent persons, but there are partly dependent persons at the time of death, the payment shall be fifty per cent of the average monthly support actually received from the employé during the preceding twelve months, and to continue for such portion of the period of six years after the date of injury as the commission in case may determine, and not to amount to more than a maximum of twenty dollars per month.

Sec. 34. The benefits, in case of death, shall be paid to such one or more dependents of the decedent, or to such other person, for the benefit of all of the dependents, as may be determined by the commission which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made if the commission deem proper, and shall operate to discharge all other claims therefor.

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West Virginia

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Sec. 35. The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the commission.

Sec. 36. Notwithstanding anything herein contained, no sum shall be paid to a widow or widower who shall have been living separate and apart from, or have been abandoned by the employé for twelve months next preceding the injury, and who shall not have been supported by him or her during such time. But in the event a chancery suit or other action be pending concerning the relations of said widow, or widower to said employé, then payment shall be made subject to the final adjudication of said suit or action.

Sec. 37. The average weekly wage or earnings of the injured person at the time of injury shall be taken as the basis upon which to compute the benefits. The time of injury within the meaning of this act shall be such reasonable time prior to the injury as shall enable the commission to make a fair award, taking into consideration both the rate of wage or earning of such person prior to his entering the service in which he was injured may be taken into consideration.

Sec. 38. Payments may be made in such periodical installments as may seem best to the commission in each case. Notwithstanding anything herein contained, the commission may direct the repayment of and pay out of any installment any advances for necessities that may have been made by any person pending the payment of such installment.

Sec. 39. To entitle any employé or dependent of a deceased employé to compensation under this act the application therefor must be made in due form within six months from and after the date of injury or death, as the case may be. No person shall be excluded as a dependent by reason of being a non-resident alien, and non-resident aliens may be officially represented by the consular officers of the country of which such aliens may be citizens or subjects.

Sec. 40. The power and jurisdiction of the commission over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion, may be justified.

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West Virginia

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Sec. 41. The commission, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

Sec. 42. Benefits before payment shall be exempt from all claims of creditors and from any attachment or execution and shall be paid only to or for the use of such employes or their dependents as hereinbefore provided.

Sec. 43. The commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final. *Provided, however,* in case the final action of said commission denies the right of the claimant to participate at all in such fund, on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant may, within sixty days after notice of the final action of such commission, apply for an appeal to the supreme court of appeals. The appellant shall file a petition before said supreme court of appeals against such commission as defendant, within said period of sixty days, and the commission shall be notified by the clerk of said court, forthwith, of the filing of such petition for appeal. And the commission shall, within ten days after the receipt of such proceedings before the commission, including the receipt of such notice, file with the clerk of said court the record of such proceedings before the commission, including a transcript of the evidence. The court, or any judge thereof, may thereupon decide whether an appeal shall be granted or not. If granted, the commission and the claimant or the claimant's attorney shall be notified of the fact by mail. If an appeal is granted the case shall be tried by said court in the same manner as other cases before it, save and except that neither the record nor briefs need be printed, and that every such appeal granted prior to thirty days before the beginning of any term shall be on the docket for such term, and such appeals shall have precedence over other cases on such docket. The attorney general, without extra compensation, or other counsel, if the commission see fit to employ the same, shall represent the commission on such appeal. The supreme court, on such appeal, shall determine the right of the claimant and certify its decision to the commission, and, if it

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West Virginia

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determines the right in his favor, the commission shall fix his compensation within the limits and under the rules prescribed in this act. The costs of such proceedings, including a reasonable attorney's fee, not exceeding one hundred dollars, to the claimant's attorney, to be fixed by the court, shall be taxed against the unsuccessful party. No fees, expenses or costs shall be paid out of any compensation awarded.

Sec. 44. Such commission shall not be bound by the usual common law or statutory rules of evidence, or by any technical or formal rules of procedure, other than herein provided, but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly and liberally the spirit of this act.

Sec. 45. The commission may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section eighteen.

Sec. 46. Annually on or about the fifteenth day of September in each year, such commission, under the oath of at least two of its members, shall make a report as of the thirtieth day of June, to the governor, which shall include a statement of the number of awards made by it, and of a general statement of the causes of the accidents leading to the injuries for which the awards were made; a detailed statement of all disbursements, and the condition of its fund, together with any other matters which such commission deems it proper to call to the attention of the governor, including any recommendations it may have to make, and the commission whenever required by the governor shall report to him as to any designated subject or matter, and furnish such information as may be required.

Sec. 47. The commission may sue in the circuit court of Kanawha county in its own name for any premiums owing from any employer for any part of the period intervening between notice given by such employer as hereinbefore provided of his election to pay into the fund the premiums provided by this act, and notice similarly given of the election of such employers to discontinue the payment of such premium, and such employer shall be liable in any action so brought for such premium and interest thereon with costs.

Sec. 48. The auditor shall issue his warrant for any disburse-

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West Virginia

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ment hereunder only when approved in writing by the chairman or acting chairman and secretary of the commission, and the chairman or acting chairman and secretary shall not issue any such approval unless authorized by the commission on an order entered of record. Whenever it shall appear that the chairman will be absent or unable to act at sessions of the commission for one week or more, another member of the commission may be designated by the commission as acting chairman during the absence or inability to act of the chairman, and during such period shall have all the duties and powers of the chairman.

Sec. 49. Any person, firm or corporation, knowingly failing to make any report or perform any duty required by the commission within the time specified, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than twenty-five hundred dollars. Any person, or firm, or the officer of any corporation, who knowingly makes a false report or statement under oath, or affidavit respecting any information required by the commission, or who shall knowingly testify falsely in any proceeding before the commission, shall be deemed guilty of perjury and upon conviction thereof shall be punished as provided by law.

Sec. 50. Any person who shall knowingly secure or attempt to secure larger compensation, or compensation for a longer term than he is entitled to, from said workmen's compensation fund, or knowingly secure or attempt to secure compensation from said fund when he is not entitled to any, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court, and shall, from and after such conviction, cease to receive any compensation from such fund.

Sec. 51. Whenever and as often as there shall be in the hands of the treasurer any sum belonging to the workmen's compensation fund not likely, in the opinion of the commission, to be required for immediate use, it shall be the duty of the board of public works, when called upon by the commission, to loan such sum or to invest the same in interest bearing securities, and when and as it may become necessary or expedient to use the moneys so loaned or invested the board of public works shall,

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West Virginia

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when called upon by the commission, collect or sell or otherwise realize upon any such loan or investment, and any interest accruing upon any such loan or investment, as well as any interest received upon the deposit of moneys belonging to said fund, shall be credited to said fund.

Sec. 52. The provisions of this act shall apply to employers and employ  s engaged in intrastate and also in interstate or foreign commerce for whom a rule of liability or method of compensation has been or may be established by the congress of the United States only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his employ  s working only in this state may with the approval of the commission, and so far as not forbidden by any act of congress, voluntarily accept the provisions of this act by filing written acceptances with the commission, and such acceptances, when filed with and approved by the commission, shall subject the acceptors irrevocably to the provisions of the act to all intents and purposes as if they had been originally included in its terms. Payments of premium shall be on the basis of the pay roll of the employ  s who accept as aforesaid.

Sec. 53. If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his employ  ; or if any employ   shall be adjudicated to be outside the lawful scope of this act, because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of this act for the creation of the fund, or the provisions of this act making the compensation to the employ   provided in it exclusive of any other remedy on the part of the employ   shall be held invalid, the entire act shall be thereby invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Sec. 54. If deemed best by it the commission may insure in

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West Virginia

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any liability insurance company, or companies, authorized to do business in West Virginia, all or any part or class of, or one or more individual risks of, the liabilities of the workmen's compensation fund for any year or series of years, and apply so much as may be necessary of the premiums collected for such year or years toward the payment of the premiums for such insurance.

Sec. 55. If the provisions of this act relating to compensation for injuries to, or death of workmen shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of any injury or death and such appeal, or the final adjudication of invalidity or unconstitutionality, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injuries or death, but the amount of any compensation which may have been paid on account of such injury or death, shall be deducted from any judgment for damages recovered on account of such injury or death.

Sec. 56. All acts and parts of acts in conflict with this act are hereby repealed.

## WISCONSIN

(As Am'd to June 30, 1913)

SECTION 2394-1. 1. In any action to recover damages for a personal injury sustained within this state by an employé while engaged in the line of his duty as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

(1) That the employé either expressly or impliedly assumed the risk of the hazard complained of.

(2) When such employer has at the time of the accident in a common employment four or more employés, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

(3) When such employer has at the time of the accident, in a common employment four or more employés, that the injury or death was caused in whole or in part by the want of ordinary care of the injured employé, where such want of ordinary care was not wilful.

2. Any employer who has elected to pay compensation as hereinafter provided shall not be subject to the provisions of this section 2394-1.

Section 2394-2. No contract, rule, or regulation, shall exempt the employer from any of the provisions of section 2394-1.

Section 2394-3. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall exist against an employer for any personal injury accidentally sustained by his employé, and for his death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employé are subject to the provisions of sections 2394-3 to 2394-31, inclusive.

(2) Where, at the time of the accident, the employé is performing service growing out of and incidental to his employment.

Every employé going to and from his employment in the ordi-



nary and usual way, while on the premises of his employer, shall be deemed to be performing service growing out of and incidental to his employment.

(3) Where the injury is proximately caused by accident, and is not intentionally self-inflicted.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of sections 2394-3 to 2394-31, inclusive, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death; in all other cases, the liability of the employer shall be the same as if this and the succeeding sections of sections 2394-3 to 2394-31, inclusive, had not been passed, but shall be subject to the provisions of sections 2394-1 to 2394-2.

Section 2394-4. The following shall constitute employers subject to the provisions of sections 2394-3 to 2394-31, inclusive, within the meaning of section 2394-3:

(1) The state, and each county, city, town, village, and school district therein.

(2) Every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employé for which compensation under sections 2394-3 to 2394-31, inclusive, may be claimed, shall, in the manner provided in section 2394-5, have elected to become subject to the provisions of sections 2394-3 to 2394-31, inclusive, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in subsection 1 of section 2394-5.

Section 2394-5. 1. Such election on the part of the employer shall be made by filing with the industrial commission, a written statement to the effect that he accepts the provisions of sections 2394-3 to 2394-31, inclusive, the filing of which statement shall operate, within the meaning of section 2394-4, to subject such employer to the provisions of sections 2394-3 to 2394-31, inclusive, for the term of one year from the date of filing such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any suc-

ceeding year, file in the office of said commission a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of sections 2394-3 to 2394-31, inclusive.

2. On and after September 1, 1913, every employer of four or more employés in a common employment shall be deemed to have elected to accept the provisions of sections 2394-3 to 2394-31, inclusive, unless prior to that date such employer shall have filed with the industrial commission a notice in writing to the effect that he elects not to accept the provisions hereof. Provided, that any employer commencing business subsequent to September 1, 1913, may make his election not to become subject to sections 2394-3 to 2394-31, inclusive, at any time prior to becoming an employer of four or more employés in a common employment. Such employer may withdraw from the provisions of sections 2394-3 to 2394-31, inclusive, at the expiration of one year or at the expiration of any succeeding year in the manner provided in subsection 1 of section 2394-5.

Section 2394-6. An employer subject to the provisions of sections 2394-3 to 2394-31, inclusive, shall be liable for compensation to an employé of a contractor or subcontractor under him who is not subject to sections 2394-3 to 2394-31, inclusive, and has not complied with the conditions of subsection 2 of section 2394-24 in any case where such employer would have been liable for compensation if such employé had been working directly for such employer. The contractor or subcontractor shall also be liable for such compensation, but the employé shall not recover compensation for the same injury from more than one party. The employer who shall become liable for and pay such compensation may recover the same from such contractor or subcontractor for whom the employé was working at the time of the accident.

Section 2394-6 shall be in force as to all contracts made subsequent to August 31, 1913.

Section 2394-7. The term "employé" as used in sections 2394-1 to 2394-31, inclusive, shall be construed to mean:

(1) Every person in the service of the state, or of any county, city, town, village, or school district therein under any appointment, or contract of hire, express or implied, oral or written,

## Wisconsin

except any official of the state, or of any county, city, town, village, or school district therein. The state and any county or municipality may require a bond from a contractor to protect the state, county or municipality against compensation to employes of such contractor or employes of a subcontractor under him.

Policemen and firemen shall be deemed employes within the meaning of subdivision (1) of section 2394-7; provided, that any policeman or fireman claiming compensation under sections 2394-3 to 2394-31, inclusive, shall have deducted from such compensation any sum which such policeman or fireman may receive from any pension or other benefit fund to which the municipality may contribute.

(2) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of section 2394-8, shall be considered the same and shall have the same power of contracting as adult employes), but not including any person whose employment is but casual or is not in the usual course of the trade, business, profession, or occupation of his employer.

Section 2394-8. Any employé as defined in subdivision (1) of section 2394-7 shall be subject to the provisions of sections 2394-3 to 2394-31, inclusive. Any employé as defined in subdivision (2) of section 2394-7 shall be deemed to have accepted and shall, within the meaning of section 2394-3, be subject to the provisions of sections 2394-3 to 2394-31, inclusive, if, at the time of the accident upon which liability is claimed:

(1) The employer charged with such liability is subject to the provisions of sections 2394-3 to 2394-31, inclusive, whether the employé has actual notice thereof or not; and

(2) Such employé shall not, at the time of entering into his contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of sections 2394-3 to 2394-31, inclusive; or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of sections 2394-3 to 2394-31, inclusive, such employé shall have

given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed with said commission an election to be subject to the terms of sections 2394-3 to 2394-31, inclusive, or when such employer has become subject to sections 2394-3 to 2394-31, inclusive, pursuant to subsection 2 of section 2394-5.

(3) The provisions of sections 2394-3 to 2394-31, inclusive, shall not apply to employes operating, running or riding upon, or switching freight or other trains, engines or cars for a railroad company operating a steam railroad as a common carrier, unless both employer and employe shall specifically, in writing, have voluntarily accepted the provisions of said sections, and have filed notice thereof with the industrial commission, and shall not apply to employes of such common carriers injured or killed while the common carrier and the employe are engaged in interstate commerce.

Section 2394-9. Where liability for compensation under sections 2394-3 to 2394-31, inclusive, exists, the same shall be as provided in the following schedule:

(1) Such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer; and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employe in providing the same.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employe leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability; provided that, if the disability is such as not only to render the injured employe entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance after the first ninety

## Wisconsin

days shall be increased to one hundred per cent of the average weekly earnings.

(b) If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subdivisions (a) and (b), respectively.

(d) Said subdivisions (a), (b) and (c) shall be subject to the following limitations:

In case of temporary or partial disability aggregate indemnity for injury to a single employé caused by a single accident shall not exceed four times the average annual earnings of such employé, and in case of permanent total disability aggregate indemnity for injury to a single employé caused by a single accident shall not exceed six times the average annual earnings of such employé.

Total blindness of both eyes, or the loss of both arms at or near the shoulder, or of both legs at or near the hip, or of one arm at the shoulder and one leg at the hip, shall constitute permanent total disability. This enumeration shall not be exclusive but in other cases the commission shall find the facts.

The aggregate disability period shall not, in any event, extend beyond fifteen years from the date of the accident.

The weekly indemnity due on the eighth day after the employé leaves work as the result of the injury may be withheld until the twenty-ninth day after he so leaves work; if recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability still continues, it shall be added to the weekly indemnity due on said twenty-ninth day and be paid therewith.

If the period of disability does not last more than one week from the day the employé leaves work as the result of the injury, no indemnity whatever shall be recoverable.

(3) Where death proximately results from the injury and the deceased leaves a person or persons wholly dependent upon him for support, the death benefit shall be as follows:

(a) In case the injured employé was permanently totally dis-

## Wisconsin

abled, a sum equal to four times his average annual earnings, but which, when added to the disability indemnity paid and due at the time of death, shall not exceed six times his average annual earnings.

(b) In case the injured employé was not permanently totally disabled, such sum which, when added to the disability indemnity paid and due at the time of his death, shall equal four times his average annual earnings.

(4) If death occurs to an injured employé other than as a proximate result of the accident, before disability indemnity ceases, death benefit shall be as follows:

(a) Where the accident proximately causes permanent total disability, it shall be the same as if the accident had caused death.

(b) Where the accident proximately causes permanent partial disability, liability shall exist for such benefit as shall fairly represent the proportionate extent of the impairment of earning capacity in the employment in which the deceased was working at the time of the accident or other suitable employment, caused by such disability.

(c) In case the deceased employé leaves no one wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall not exceed four times the amount devoted by deceased, during the year immediately preceding his death, to the support of such dependents and shall be apportioned according to the percentage that the amount devoted by the deceased to the support of such person or persons, for the year immediately prior to the accident, bears to the average annual earnings of the deceased.

(d) If the deceased employé leaves no person dependent upon him for support, and the accident proximately causes death, the death benefit shall consist of the reasonable expense of his burial, not exceeding one hundred dollars.

(e) Death benefit shall be paid in weekly instalments corresponding in amount to sixty-five per cent of the weekly earnings of the employé, until otherwise ordered by the commission.

(5) In cases included by the following schedule, the compensation to be paid, subject to the provisions of this act for maximum and minimum payments, shall be sixty-five per cent of the aver-

age weekly earnings of the employé for the periods named in the schedule, to wit:

- The loss of one arm at or near the shoulder, 240 weeks;
- The loss of an arm at the elbow, 200 weeks;
- The loss of a forearm at the lower half thereof, 160 weeks;
- The loss of a hand, 160 weeks;
- The loss of a palm where the thumb remains, 80 weeks;
- The loss of a thumb and the metacarpal bone thereof, 60 weeks;
- The loss of a thumb at the proximal joint, 40 weeks;
- The loss of a thumb at the second or distal joint, 20 weeks;
- The loss of an index finger and the metacarpal bone thereof,

30 weeks;

- The loss of an index finger at the proximal joint, 20 weeks;
- The loss of an index finger at the second joint, 15 weeks;
- The loss of an index finger at the distal joint, 10 weeks;
- The loss of a second finger and the metacarpal bone thereof,

20 weeks;

- The loss of a middle finger at the proximal joint, 15 weeks;
- The loss of a middle finger at the second joint, 10 weeks;
- The loss of a middle finger at the distal joint, 5 weeks;
- The loss of a third or ring finger and the metacarpal bone

thereof, 12 weeks;

- The loss of a ring finger at the proximal joint, 8 weeks;
- The loss of a ring finger at the second joint, 6 weeks;
- The loss of a ring finger at the distal joint, 4 weeks;
- The loss of a little finger and the metacarpal bone thereof, 15

weeks;

- The loss of a little finger at the proximal joint, 10 weeks;
- The loss of a little finger at the second joint, 8 weeks;
- The loss of a little finger at the distal joint, 4 weeks;

The loss of all the fingers of one hand where the thumb and palm remain, 60 weeks;

The loss of a leg at the hip joint, or so near thereto as to preclude the use of an artificial limb, 240 weeks;

The loss of a leg at or above the knee, where stump remains sufficient to permit the use of an artificial limb, 160 weeks;

The loss of a foot at the ankle, 120 weeks;

The loss of a great toe with the metatarsal bone thereof, 30 weeks;

## Wisconsin

- The loss of a great toe at the proximal joint, 20 weeks;
- The loss of a great toe at the second joint, 10 weeks;
- The loss of any other toe with the metatarsal bone thereof, 12 weeks;
- The loss of any other toe at the proximal joint, 4 weeks;
- The loss of any other toe at the second or distal joint, 4 weeks;
- The loss of all the toes of one foot, 40 weeks;
- The loss of an eye by enucleation, 160 weeks;
- The loss of the second eye, by enucleation, 320 weeks;
- Total blindness of one eye, 120 weeks;
- Total blindness of the second eye, 240 weeks;
- Total deafness of both ears, 160 weeks;
- Total deafness of one ear, 40 weeks;
- Total deafness of the second ear, 120 weeks.

When by reason of infection or other cause not due to the neglect or misconduct of the injured employé, he is actually disabled longer than the time specified in the foregoing schedule from earning a wage, compensation shall be paid such employé for such loss of wage within the limits otherwise provided.

For the purposes of this schedule permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

Whenever an amputation is made between any two joints mentioned in this schedule (except amputations between the knee and hip joint) the resultant loss shall be estimated as if the amputation had been made at the joint nearest thereto.

In all other cases in this class the compensation shall bear such relation to the amount stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule.

If an employé is seriously permanently disfigured about the face or head, the commission may allow such sum for compensation on account thereof, as it may deem just, not exceeding \$750.

In case of permanent injury to an employé who is over fifty-five years of age, the compensation herein shall be reduced by 5 per cent; in case he is over sixty years of age, by 10 per cent; in case he is over sixty-five years of age, by 15 per cent.

(a) Where injury is caused by the failure of the employer to comply with any statute of the state or any lawful order of the



## Wisconsin

industrial commission, compensation as provided in sections 2394-3 to 2394-31, inclusive, shall be increased fifteen per cent.

(b) Where injury is caused by the wilful failure of the employé to use safety devices where provided by the employer, or

(c) Where injury results from the employé's wilful failure to obey any reasonable rule adopted by the employer for the safety of the employé, or

(d) Where injury results from the intoxication of the employé, the compensation provided herein shall be reduced fifteen per cent.

(e) Any time after six months have elapsed from the date of the injury, the commission may order payment in gross or in such manner as it may determine to the best interest of the parties. When payment in gross is ordered, the commission shall fix the gross amount to be paid based on the present worth of partial payments, considering interest at three per cent per annum.

Section 2394-10. 1. The average weekly earnings referred to in section 2394-9 shall be one fifty-second of the average annual earnings of the employé.

The average annual earnings for employés operating, running, riding upon, or switching passenger, freight or other trains, engines or cars for a railroad company operating a steam railroad as a common carrier, shall be taken at not less than \$500 nor more than \$1250 per annum; and for all other employés such average annual earnings shall be taken at not less than \$375 nor more than \$750. Between said limits such average annual earnings shall be determined as follows:

(a) If the injured employé has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

(b) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such

immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employé cannot reasonably and fairly be applied, such average annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment, in the same or a neighboring locality, shall reasonably represent the average annual earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time.

If an employé is a minor and is permanently disabled, his weekly earnings shall be determined on the basis of the earnings that such minor, if not disabled, probably would earn after attaining the age of twenty-one years.

(d) The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his average annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of the previous provisions of this section.

2. The weekly loss in wages referred to in section 2394-9 shall consist of such percentage of the average weekly earnings of the injured employé, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, and other suitable employments, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she is living at the time of his death.

(b) A husband upon a wife with whom he is living at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided between such dependents in such proportion as may be determined by the commission after considering the ages of such dependents and other facts bearing on such dependency.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the accident to the employé; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof; and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

4. No person shall be considered a dependent unless a member of the family of the deceased employé, or one who bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister.

5. Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees; provided that in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the same as is then unpaid shall be recoverable by and payable to his personal representatives in gross. No person shall be excluded as a dependent who is a non-resident alien.

6. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement or collection of any claim for com-

## Wisconsin

pensation, nor as respects the compromise thereof by such employé.

Section 2394-11. No claim to recover compensation under sections 2394-3 to 2394-31, inclusive, shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured or by some one on his behalf, or in case of his death, by a dependent or some one on his behalf, shall be served upon the employer, either by delivering to and leaving with him a copy of such notice, or by mailing to him by registered mail a copy thereof in a sealed and postpaid envelope addressed to him at his last known place of business or residence. Such mailing shall constitute completed service. Provided, however, that any payment of compensation under sections 2394-3 to 2394-31, inclusive, in whole or in part, made by the employer before the expiration of said thirty days, shall be equivalent to the notice herein required; and provided, further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under sections 2394-3 to 2394-31, inclusive, if it is found as a fact in the proceedings for collection of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby; and provided, further, that if no such notice is given and no payment of compensation made, within two years from the date of the accident, the right to compensation therefor shall be wholly barred.

Section 2394-12. Wherever in case of injury the right to compensation under sections 2394-3 to 2394-31, inclusive, would exist in favor of any employé, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial commission, or a member or examiner thereof. The employé shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employé, after such written request of the employer, shall refuse to

## Wisconsin

submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the commission, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof. Any physician having attended an employé in a professional capacity may be required to testify before the commission when it shall so direct.

Section 2394-13. Sections 2394-3 to 2394-31, inclusive, shall be administered by the industrial commission. A majority of the commission shall constitute a quorum for the exercise of any of the powers or authority conferred by sections 2394-3 to 2394-31, inclusive, and an order or award made by a majority shall be valid. In case of a vacancy, the remaining two members of the commission shall exercise all the powers and authority of the commission until such vacancy is filled.

Section 2394-14. Subject to the provisions of sections 2394-3 to 2394-31, inclusive, the commission may adopt its own rules of procedure and may change the same from time to time in its discretion. The commission, when it shall deem it necessary to expedite its business, may, from time to time, employ one or more expert examiners for such length of time as may be required, such examiners to be exempt from the operation of sections 990-1 to 990-32, inclusive, of the statutes. It may employ such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Industrial Commission—Wisconsin—Seal." The members and assistants of the commission shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the commission; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the commission, before payment is made. All salaries and expenses authorized by sections 2394-3 to 2394-31, inclusive, shall be

## Wisconsin

audited and paid out of the general funds of the state, the same as other general state expenses are audited and paid.

Section 2394-15. Any dispute or controversy concerning compensation under sections 2394-3 to 2394-31, inclusive, including any in which the state may be a party, shall be submitted to said industrial commission in the manner and with the effect provided in sections 2394-3 to 2394-31, inclusive. Every compromise of any claim for compensation under sections 2394-3 to 2394-31, inclusive, shall be subject to be reviewed by, and set aside, modified or confirmed by the commission upon application made within one year from the time of such compromise.

Section 2394-16. Upon the filing with the commission by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The commission shall cause notice of such hearing, embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the commission, and hearings may be held at such places as the commission shall designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the commission; but the commission, may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the timebooks and pay roll of the employer to be examined by any member of the commission or any examiner appointed by it, and may from time to time direct any employé claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the commission for its consideration upon final hearing. All ex parte testimony taken by the commission shall be reduced to writing and either party shall have opportunity to rebut the same on final hearing. The commission, or any member thereof, or any examiner appointed thereby, shall have

## Wisconsin

power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths.

Any person who shall wilfully fail or neglect to appear and testify or to produce books, papers and records as required by such subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not longer than thirty days for each such offense. Each day such person shall so refuse or neglect shall constitute a separate offense.

The circuit court of the county wherein such person resides, upon application of the commission or any member thereof or any such examiner, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers and records before such commission or any member thereof or any such examiner.

Section 2394-17. After final hearing by said commission, it shall make and file (1) its findings upon all the facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the parties. Pending the hearing and determination of any controversy before it, the commission shall have power to order the payment of such, or any part, of the compensation, which is or may fall due, as to which the party from whom the same is claimed does not deny liability in good faith within ten days after the giving of notice of hearing provided for in the preceding section; and if the same shall not be paid as required by such order, the facts with respect to the liability therefor, and the determination of the commission as to the rights of the parties, shall be embraced in, and constitute a part of, its finding and award; and the commission shall have the power to include in its award, as a penalty for non-compliance with any such order, if it shall find that non-compliance was not in good faith, not exceeding twenty-five per cent of each amount which shall not have been paid as directed thereby.

The commission may on its own motion, modify or change its order, findings or award at any time within ten days from the date thereof if it shall discover any mistake therein.

Section 2394-18. Either party may present a certified copy

## Wisconsin

of the award to the circuit court for any county, whereupon said court shall, without notice, render a judgment in accordance therewith; which judgment, until and unless set aside as herein-after provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

Section 2394-19. 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive; and the order or award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within twenty days from the date of the order or award, any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the commission for the review of such order or award, in which action the adverse party shall also be made defendant. In such action a complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the commission, or any member of the commission, shall be deemed completed service. The commission shall serve its answer within twenty days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to said complaint. With its answer, the commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, findings and award. Such return of the board when filed in the office of the clerk of the circuit court shall, with the papers mentioned in section 2398 of the statutes, constitute a judgment roll in such action; and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

- (1) That the commission acted without or in excess of its powers.



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Wisconsin

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(2) That the order or award was procured by fraud.

(3) That the findings of fact by the commission do not support the order or award.

2. Any action commenced in court under section 2394-19 to set aside or modify any order or award of the commission must be brought to trial within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time, and further continuance may be had only upon order of the court for cause.

3. Upon the trial of any such action the court shall disregard any irregularity or error of the commission unless it be made to affirmatively appear that the plaintiff was damaged thereby.

4. The record in any case shall be transmitted to the commission within twenty days after the order or judgment of the court, unless appeal shall be taken from such order or judgment.

Section 2394-20. Upon the setting aside of any order or award the court may recommit the controversy and remand the record in the case to the commission, for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such order or award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties.

Section 2394-21. Said commission, or any party aggrieved by a judgment entered upon the review of any order or award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the circuit court, except that it shall not be necessary for said commission or any party to said action to execute, serve or file the undertaking required by section 3052 of the statutes in order to perfect such appeal; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as state causes on such calendar.

Section 2394-22. No fees shall be charged by the clerk of any court for the performance of any official service required by

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Wisconsin

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sections 2394-3 to 2394-31, inclusive, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an order or award, costs as between the parties shall be allowed or not in the discretion of the court, but no costs shall be taxed against said commission. In any action for the review of an order or award, and upon any appeal therein to the supreme court, it shall be the duty of the attorney general, personally, or by an assistant, to appear on behalf of the commission, whether any other party defendant shall have appeared or be represented in the action or not. Unless previously authorized by the commission, no lien shall be allowed, nor any contract be enforceable, for any contingent attorney's fee for the enforcement or collection of any claim for compensation where such contingent fee, inclusive of all taxable attorney's fees paid or agreed to be paid for the enforcement or collection of such claim, exceeds ten per cent of the amount at which such claim shall be compromised, or of the amount awarded, adjudged or collected.

Section 2394-23. No claim for compensation under sections 2394-3 to 2394-31, inclusive, shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

Section 2394-24. 1. The whole claim for compensation for the injury or death of any employé or any award or judgment thereon, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted, but this section shall not impair the lien of any judgment entered upon any award.

2. An employer liable under this act to pay compensation shall insure payment of such compensation in some company authorized to insure such liability in this state unless such employer shall be exempted from such insurance by the industrial commission. An employer desiring to be exempt from insuring his liability for compensation shall make application to the industrial commission showing his financial ability to pay such compensation, whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon ten days' notice in writing, revoke its order granting such

exemption, in which case such employer shall immediately insure his liability.

3. An employer who shall fail to comply with the provisions of subsection 2 of section 2394-24 shall be guilty of a misdemeanor and upon conviction thereof shall forfeit twenty-five dollars for each offense. Each day's failure shall be a separate offense. Upon complaint of the commission, such forfeitures may be collected by the state in an action in debt.

Section 2394-25. 1. The making of a lawful claim against an employer for compensation under section 2394-3 to 2394-31, inclusive, for the injury or death of his employé shall operate as an assignment of any cause of action in tort which the employé or his personal representative may have against any other party for such injury or death; and such employer may enforce in his own name the liability of such other party.

2. The making of a claim by an employé against a third party for damages by reason of an accident covered by sections 2394-3 to 2394-31, inclusive, shall operate as a waiver of any claim for compensation against the employer.

Section 2394-26. Nothing in sections 2394-3 to 2394-31, inclusive, shall affect the organization of any mutual or other insurance company, or any existing contract for insurance of employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by sections 2394-3 to 2394-31, inclusive, or to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their families, dependents or representatives, of sick, accident or death benefits in addition to the compensation provided for by sections 2394-3 to 2394-31, inclusive. But liability for compensation under sections 2394-3 to 2394-31, inclusive, shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in sections 2394-3 to 2394-31, inclusive, the liability of any insurance company which may, in whole or

in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided, further, that as between the employer and the insurance company, payment by either directly to the employé, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Section 2394-27. 1. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of sections 2394-3 to 2394-31, inclusive, and provisions thereof inconsistent with section 2394-3 to 2394-31, inclusive, shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of sections 2394-3 to 2394-31, inclusive, each employé shall constitute a separate risk within the meaning of section 1898d of the statutes; provided, that at least five employers shall join in the organization of a mutual company under subdivision (5) of section 1897 and no such company organized by employers shall be licensed or authorized to effect such insurance unless such company shall have in force or put in force simultaneously, insurance on at least one thousand five hundred separate risks.

2. The industrial commission, by itself or its employés, may examine from time to time the books and records of any liability insurance company insuring liability or compensation for an employer in this state. Any such company that shall refuse or fail to allow the industrial commission to examine its books and records or to file the report required by subsection 3 of section 2394-27, shall have its license to do business in the state revoked.

3. Every company transacting the business of compensation insurance, in addition to all other reports required by law to be made, shall, on or before the first day of March in each year, on blanks furnished for such purpose, make and file with the industrial commission an annual statement of its business and accident experience covering the year ending on the preceding thirty-first day of December.

4. Every insurance company, including any inter-insurer or other insurer authorized to do business within this state and insuring the liability of employers for compensation as herein provided, shall file with the industrial commission its classifications of risks and rates of premium relating thereto, and any changes in or additions to such classifications or rates of premium. No such company shall issue in this state any policy insuring against such liability for compensation except upon the classifications and rates of premiums so filed with the industrial commission. No such company shall discriminate between insured having risks in the same class and degree of hazard by the granting of any rebate or deduction in such rate of premium, or by any change of classification for the purpose of granting such deduction, or in any other manner. Any such company or agent violating any provision of this section shall be subject to the penalties provided by section 1955o. Upon the filing of any complaint with the commissioner of insurance alleging any violation of this section, proceedings shall be had thereon as provided for violations of section 1955o.

Section 2394-28. Any employer against whom liability may exist for compensation under sections 2394-3 to 2394-31, inclusive, may, with the approval of the industrial commission, be relieved therefrom by:

(1) Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per cent per annum, with such trust company of this state as shall be designated by the employé (or by his dependents, in case of his death, and such liability exists in their favor), or in default of such designation by him (or them) after ten days' notice in writing from the employer, with such trust company of this state as shall be designated by the commission; or

(2) By the purchase of an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employé, or his dependents, or the commission, as provided in subdivision (1) of section 2394-28.

Section 2394-29. The commission shall cause to be printed and furnished free of charge to any employer or employé such blank forms as it shall deem requisite to facilitate or promote the efficient administration of sections 2394-3 to 2394-31, inclusive;

it shall provide such proper record books or records as it shall deem required for the proper and efficient administration of sections 2394-3 to 2394-31, inclusive; all such records to be kept in the office of the commission. The commission shall cause notice of employers subject to this act to be given to employés, in such manner as the commission shall deem most effective; and the commission shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of the fact shall conclusively be imputed to all employés.

Section 2394-30. A sum sufficient to carry out the provisions of sections 2394-3 to 2394-31, inclusive, is hereby appropriated out of any money in the treasury not otherwise appropriated.

Section 2394-31. The legislature intends the contingency in subdivision (3) of section 2394-1 to be a separable part thereof, and the subdivision likewise separable from the rest of sections 2394-1 to 2394-31, inclusive, and that part of said section 2394-1 that follows subdivision (3) likewise separable from the rest of sections 2394-1 to 2394-31, inclusive; so that any part of said subdivision, or the whole, or that part which follows said subdivision (3), may fail without affecting any other part of sections 2394-1 to 2394-31, inclusive.

Section 2. This act shall take effect and be in force from and after June 30, 1913.

## CHAPTER XXV

### CANADIAN WORKMEN'S COMPENSATION LAWS

	Page		Page
ALBERTA.....	1616	NOVA SCOTIA.....	1698
BRITISH COLUMBIA.....	1641	QUEBEC.....	1713
MANITOBA.....	1655	SASKATCHEWAN.....	1725
NEW BRUNSWICK.....	1678		

#### ALBERTA

(L. 1908, c. 12; as am'd by L. 1913, c. 9)

AN ACT with respect to Compensation to Workmen  
for Injuries Suffered in the Course of Their Employ-  
ment.

(*Assented to March 5, 1908.*)

His Majesty, by and with the advice and consent of  
the Legislative Assembly of the Province of Alberta,  
enacts as follows:

#### SHORT TITLE

1. This Act may be cited as "*The Workmen's  
Compensation Act, 1908.*"

Short title.

#### APPLICATION OF ACT AND DEFINITIONS

2. This Act shall apply only to employment by the  
undertakers as hereinafter defined, on or in or about  
a railway, factory, mine, quarry or engineering work,  
and to employment by the undertakers as hereinafter  
defined on, in or about any building which is either  
being constructed or repaired by means of a scaffold-  
ing, or being demolished, or on which machinery driven  
by steam, water, or other mechanical power is being  
used for the purpose of the construction, repair, or  
demolition thereof.

## Alberta

(2) In this Act, unless the context otherwise requires—

1. "Railway" means a road owned by a private person or public company on which carriages run over metal rails, and shall include railways or tramways operated by electric or other power;

2. "Factory" means a building, workshop, or place where machinery driven by steam, water or other mechanical power is used, and includes mills where manufactures of wood, flour, meal, pulp or other substances are being carried on, also smelters where metals are sorted, extracted or operated on; every laundry worked by steam, water or other mechanical power, and also includes any dock, wharf, quay, warehouse, ship building yard, where goods or materials are being stored, handled, transported or manufactured;

3. "Mine" means any kind of mine, and includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, railways and sidings, both below ground and above ground, in and adjacent to a mine, and any such shaft, level and inclined plane of and belonging to the mine;

4. "Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, watermain or sewer, and includes any other work for the construction, alteration or repair of which machinery, driven by steam, water or other mechanical power, is used;

5. "Quarry" means an open cut from which rock is cut or taken for building purposes;

6. "Undertaker," in the case of a railway, means the person or company owning or operating the railway; in the case of a factory, quarry, laundry, smelter or warehouse means the owner, occupier or operator thereof; in the case of a mine means the owner or operator thereof, and in the case of an engineering work,



or other work specified within this Act, means the person undertaking the construction, alteration, repair or demolition;

7. "Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

8. "Workman" includes every person who is engaged in an employment to which this Act applies whether by way of manual labour or otherwise, but does not include any person employed otherwise than by way of manual labour whose remuneration exceeds twelve hundred dollars a year, or an outworker, but, save as aforesaid, means any such person who has entered into or works under a contract of service or apprenticeship with an employer in any employment to which this Act extends, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom or for whose benefit compensation is payable;

9. "Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his

## Alberta

earnings, shall include such an illegitimate child and parent or grandparent respectively;

10. "Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister, adopted child, foster parent;

11. "Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or municipal authority or corporation shall, for the purposes of this Act, be treated as the trade or business of the authority or corporation.

## LIABILITY OF EMPLOYERS TO WORKMAN FOR INJURIES

3. If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this Act.

Liability of employers to workmen for injuries.

(2) Provided that—

- (a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman from earning full wages at the work at which he was employed;<sup>1</sup>
- (b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option,

<sup>1</sup> This section was amended in 1913 by repealing the provision for a waiting period of two weeks.

either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or permanent disablement, be disallowed.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act, including any question as to whether the employment is one to which this Act applies, or as to whether the person injured is a workman to whom this Act applies, or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this Act, be settled by arbitration, in accordance with the second schedule to this Act.

(4) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the

## Alberta

plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this subsection when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

## TIME FOR TAKING PROCEEDINGS

4. Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice in writing of the accident has been given as soon as practicable after the happening thereof, and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Time for  
taking pro-  
ceedings.

Provided always that—

- (a) The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the province, or other reasonable cause; and
- (b) The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the province, or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the

## Alberta

injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

## CONTRACTING OUT

Contracting  
out.

5. If the Attorney General, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependents than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The Attorney General may give a certificate to

## Alberta

expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the Attorney General by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Attorney General shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Attorney General in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Attorney General.

(7) The Attorney General may make regulations for the purpose of carrying this section into effect.

## SUBCONTRACTING

6. Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business, contracts with any other person

Subcon-  
tracting.

(in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal which is in the way of the principal's trade or business, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to an amount of any such indemnity shall in default of agreement be settled by arbitration under this Act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

#### PROVISION AS TO CASES OF INSOLVENCY OF EMPLOYER

Provision as to  
Cases of insol-  
vency of  
Employer.

7. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer making an assignment for the benefit of or a composition or arrangement with his creditors, or if

## Alberta

the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employers to the workman the workman may prove for the balance in the assignment or liquidation proceedings.

(3) There shall be included among the debts which under *The Assignments Act*, and *The Companies Winding-Up Ordinance*, are in the distribution of the property in the case of an assignment, and in the distribution of the assets of a company being wound up, under the said Act and Ordinance respectively, to be paid in priority to all other debts, the amount, not exceeding in any individual case five hundred dollars, due in respect of any compensation the liability wherefor accrued before the date of the assignment or the date of the commencement of the winding up, and the said Acts shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this Act.

(4) The provisions of this section with respect to preferences and priorities shall not apply where the assignor or the company being wound up has entered into such contract with insurers as aforesaid.

(5) This section shall not apply where a company is wound up voluntarily merely for the purposes of



## Alberta

reconstruction or of amalgamation with another company.

## REMEDIES BOTH AGAINST EMPLOYER AND STRANGER

Remedies both against employer and stranger.

8. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to subcontracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

## PROVISIONS AS TO EXISTING CONTRACTS

Provision as to existing contracts.

9. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

10. Notwithstanding anything hereinbefore contained this Act shall not apply to the employment of agriculture, nor to any work performed or machinery

## Alberta

used on or about a farm or homestead for farm purposes or for the purposes of improving such farm or homestead and for greater certainty but so as not to restrict in any degree the generality of the foregoing words of this section this Act shall not apply to any of the following employments on a farm:

- (a) Threshing, cleaning, crushing, grinding or otherwise treating grain or sawing wood, posts, lumber or other wooden material, or otherwise treating the same, or the pressing of hay, by any kind of machinery or motive power, and whether such machinery or motive power be portable or stationary, and whether the same be owned and operated by the farmer or farmers for whose purpose the same is being used, or by any other farmer or other person for gain, profit or reward.
- (b) The construction, repair or demolition of any farm building, windmill, derrick or other structure.

(2) The word "factory" as defined in this Act shall not be held to include any building, workshop, place or mill on a farm used for the purposes of such farm.

(3) The words "mine" or "quarry" as defined in this Act shall not be held to include any mine or quarry on a farm used for the purposes only of such farm.

(4) The words "engineering work" as defined in this Act shall not be held to include any ditch, drain, well, or other excavation on a farm being constructed or repaired for the purposes of such farm, or any adjoining farm or farms.

## COMMENCEMENT

11. This Act shall come into operation on the first day of January, nineteen hundred and nine, but shall not apply in any case where the accident happened before the commencement of this Act.

Commence-  
ment.

SCHEDULES

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Unless the context otherwise requires—

- (a) The words "Court" or "District Court" when used in these schedules shall mean the District Court of the district in which all the parties concerned reside, or, if they reside in different districts, then of the district in which the accident out of which the matter arose occurred, or any judge of such District Court;
  - (b) "Rules of Court" shall mean rules of court made and promulgated as provided for in *The District Courts Act*.
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FIRST SCHEDULE

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## SCALE AND CONDITIONS OF COMPENSATION

Scale and  
conditions of  
compensation.

- (1) The amount of compensation under this Act shall be:

- (a) Where death results from the injury—
  - (i) If the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one thousand dollars, whichever of those sums is the larger, but not exceeding in any case eighteen hundred dollars, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings

## Alberta

during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

- (ii) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and
- (iii) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding two hundred dollars;
- (b) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed ten dollars:

Provided that as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than ten dollars, one hundred per cent shall be substituted for fifty per cent of his average weekly earnings, but the weekly payment shall in no case exceed seven dollars and fifty cents.

- (2) For the purposes of the provisions of this sched-

## Alberta

ule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:

- (a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;
- (b) Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;
- (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;
- (d) Where the employer has been accustomed to pay to the workman a sum to cover any

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Alberta

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special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment regard shall be had to any payment, allowance or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the clerk of the court shall be a sufficient discharge in respect to the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to

whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another court in the province.

(7) Where a weekly payment is payable under this Act to a person under any legal disability the court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the court. Where there are both total and partial dependants nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(9) Where on application being made in accordance with rules of court, it appears to the court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in

## Alberta

securities or investments approved by the court by the clerk of the court in his name as clerk.

(11) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (11) of this schedule otherwise than in accordance with regulations made by the Attorney General or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the court on application may, on payment by the applicants of such fee not exceeding ten dollars as may be prescribed, refer the matter to a medical referee appointed by the Lieutenant Governor in Council.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Attorney General, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the



employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Attorney General, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and as to the fee to be paid under this paragraph.

(13) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding ten dollars.

(14) Where any weekly payment has been continued for not less than six months the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an

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Alberta

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amount as the court shall deem just, and such lump sum may be ordered by the court to be invested or otherwise applied for the benefit of the person entitled thereto:

Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(15) If a workman receiving a weekly payment ceases to reside in the province, he shall thereupon cease to be entitled to receive any weekly payment unless a medical referee appointed hereunder certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his indemnity and the continuance of the incapacity in respect of which the weekly payment is payable.

(16) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(17) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

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SECOND SCHEDULE

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ARBITRATION, ETC.

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(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under

## Alberta

this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the court, according to the procedure prescribed by rules of court.

(3) *The Arbitration Ordinance* or any Act of the Legislature of Alberta substituted therefor shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the court, and the decision of the court on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Supreme Court *en banc*; and the court shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the court.

(4) The court may summon a medical referee to sit with the court as an assessor.

(5) Rules of court may make provision for the appearance in any arbitration under this Act of any party by any other person.

(6) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator or court, subject as respects such court to rules of court. The costs,

## Alberta

whether before a committee or an arbitrator or in the court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the court.

(7) In case of the death, or refusal or inability to act, of an arbitrator, the court may, on the application of any party, appoint a new arbitrator.

(8) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the clerk of the court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the court:

Provided that—

- (a) No such memorandum shall be recorded before seven days after the despatch by the clerk of notice to the parties interested; and
- (b) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, objects to the recording of such memorandum and proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, then the memorandum shall only be recorded, if at all, on such terms as the court under the circumstances may think just; and
- (c) The court may at any time rectify the register; and
- (d) Where it appears to the clerk of the court, on any information which he considers sufficient,

## Alberta

that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the court and the court shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances may seem just; and

- (e) The court may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to the satisfaction of the court that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances may seem just.

(9) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the

## Alberta

payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(10) The duty of District Courts under this Act shall, subject to rules of court, be part of the duties of such courts, and the officers of such courts shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects such courts, and proceedings therein.

(11) No court fee, except such as may be prescribed under paragraph (12) of the first schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

(12) Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13) Any committee, arbitrator or court may, subject to regulations made by the Attorney General, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(14) The Attorney General may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on courts or judges thereof, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisoes (d) and (e) of paragraph (8) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential or supplemental provisions as may appear to the Attorney General to be necessary or proper for the purposes of the order.

## BRITISH COLUMBIA

(L. 1911, c. 244)

AN ACT respecting Compensation to Workmen for Accidental Injuries suffered in the Course of their Employment.

*His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—*

### SHORT TITLE

1. This Act may be cited as the “Workmen’s Compensation Act.” [60 & 61 Vict., c. 37, s. 10, subsec. (2)]; 1902, c. 74, s. 1. Short title.

### INTERPRETATION

2. In this Act, unless the context otherwise requires,—

“Railway” means a road owned by a private person or public company on which carriages run over metal rails, and shall include railways or tramways operated by electric or other power: “Railway.”

“Factory” means a building, workshop, or place where goods are manufactured, and includes mills where manufactures of wood, flour, meal, pulp, or other substances are being carried on, also smelters where metals are sorted, extracted, or operated on; every laundry worked by steam, water, or other mechanical power; and also includes any dock, wharf, quay, warehouse, ship-building yard, marine railways, where goods or materials are being stored, handled, transported, or manufactured: “Factory.”

“Mine” means a mine to which the “Coal-mines Regulation Act,” or the “Mineral Act,” or the “Placer-mining Act” apply: “Mine.”



## British Columbia

"Engineering work."	"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:
"Quarry."	"Quarry" means an open-cut from which rock is cut or taken for building purposes:
"Undertaker."	"Undertaker," in the case of a railway, means the railway company; in the case of a factory, quarry, laundry, smelter, or warehouse, means the occupier or operator thereof; in the case of a mine, means the owner thereof; and in the case of an engineering work, or other work specified within this Act, means the person undertaking the construction, alteration, repair, or demolition:
"Employer."	"Employer" shall include any body of persons, corporate or incorporate, and the legal personal representative of a deceased employer:
"Workman."	"Workman" shall include every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable:
"Dependants."	"Dependants" means wife, father, mother, husband, sister, brother, child, or grandchild, provided that they were wholly or part dependent upon the earnings of the workman at the time of his death. [60 & 61

## British Columbia

Vict., c. 37, s. 7, subsec. (2) (*part*); 1902, c. 74, s. 8, subsec. (2).

3. A workman employed in a factory which is a ship-building yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard. [60 & 61 Vict., c. 37, s. 7, subsec. (3)]; 1902, c. 74, s. 8, subsec. (3).

Workman in shipbuilding yard.

## APPLICATION OF ACT

4. This Act shall apply only to employment by the undertakers as hereinbefore defined on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined or in or about any building which exceeds forty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof. [60 & 61 Vict., c. 37, s. 7, subsec. (1)]; 1902, c. 74, s. 8, subsec. (1).

Application of Act and definitions.

5. This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person. [60 & 61 Vict., c. 37, s. 8, subsec. (1)]; 1902, c. 74, s. 9.

Application to workmen in employment of Crown.

6. (1) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

Liability of certain employers to workmen for injuries.

(2) Provided that—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least

two weeks from earning full wages at the work at which he was employed;

- (b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer; but in that case the workman may, at his option, either claim compensation under this Act or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;

- (c) If it is proved that the injury to a workman is attributable solely to the serious and wilful misconduct or serious neglect of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration in accordance with the Second Schedule to this Act.

(4) If within the time hereinafter in this Act limited for taking proceedings an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been

## British Columbia

liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the Court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing this action instead of proceeding under this Act. In any proceeding under this subsection, when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5) Nothing in this Act shall affect any proceedings for a fine under the enactments relating to mines and other industries, or the application of any such fine; but if any such fine or any part thereof has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act. [60 & 61 Vict., c. 37, s. 1]; 1902, c. 74, s. 2.

7. (1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintained unless notice of the accident has been given as soon as practicable after the happening thereof, and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from time of death: Provided always that the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

Time for taking proceedings.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last-known place of residence, or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5) Where the employer is a body of persons, corporate or incorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer, at the office, or, if there be more than one office, any one of the offices of such body. [60 & 61 Vict., c. 37, s. 2]; 1902, c. 74, s. 3.

Contracting  
out.

8. (1) If the Attorney General, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme; but, save as aforesaid, this Act shall apply notwithstanding any

## British Columbia

contract to the contrary made after the commencement of this Act.

(2) The Attorney General may give a certificate to expire at the end of a limited period not less than five years.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4) If complaint is made to the Attorney General by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Attorney-general shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Attorney-general in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and furnish all such accounts in regard to the scheme as may be made or required by the Attorney General. [60 & 61 Vict., c. 37, s. 3, subsecs. (1), (2), (3), (4), (5), (6)]; 1902, c. 74, s. 4.

9. Where in an employment to which this Act applies the undertakers as hereinbefore defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect

Sub-contracting.

of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workmen employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies: Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section. This section shall not apply to any contract with any person for the execution by or under such contract or of any work which is merely ancillary or incidental to, and is no part of or process in, the trade or business carried on by such undertakers respectively. [60 & 61 Vict., c. 37, s. 4]; 1902, c. 74, s. 5.

Compensation to workmen in case of bankruptcy of employer.

10. Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, making an assignment for the benefit of his creditors, or making a composition or arrangement with his creditors, or if the employer is a company, of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due; and a Judge of the Supreme Court may direct the insurers to pay such sum into any chartered bank of Canada in the name of the Registrar of such Court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in any chartered bank of Canada of any sum allotted as compensation, and those provisions shall apply accordingly. [60 & 61 Vict., c. 37, s. 5, subsec. (1)]; 1902, c. 74, s. 6.

Recovery of damages from strangers.

11. Where the injury for which compensation is payable under this Act was caused under circum-

## British Columbia

stances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both; and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person. [60 & 61 Vict., c. 37, s. 6]; 1902, c. 74, s. 7.

12. The Lieutenant-governor in Council may make regulations for prescribing the procedure under this Act, and until any such regulations are made the rules of the Supreme Court shall, so far as applicable, govern such procedure. (*New*).

Power to make  
rules and  
regulations.

## SCHEDULES

## FIRST SCHEDULE

## SCALE AND CONDITIONS OF COMPENSATION

1. The amount of compensation under this Act shall be:—

(a) Where death results from the injury,—

(1) If the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one thousand dollars, whichever of those sums is the larger, but not exceeding in any case the sum of fifteen hundred dollars: Provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;



(2) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(3) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars:

- (b) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payments not to exceed ten dollars: Provided that the total amount paid as compensation for injury causing such total or partial incapacity shall not exceed the sum of fifteen hundred dollars.

2. In fixing the amount of the weekly payment, regard should be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

3. Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer; and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

4. The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative shall be

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British Columbia

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paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

5. Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

6. The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

7. Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested, in whole or in part, in the savings department in any chartered bank in Canada by the Registrar of the Supreme Court in his name as Registrar.

8. Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of this examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his rights to such weekly payments shall be suspended until such examination has taken place.

9. Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

10. Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by

arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

11. A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same. [60 & 61 Vict., c. 37 Sch. 1, ss. 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14]; 1902 c. 74, Sch. 1.

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## SECOND SCHEDULE

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### ARBITRATION

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration:—

1. If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

2. If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or, in the absence of agreement by an arbitrator appointed by a Judge of the Supreme Court, according to the procedure prescribed by regulations made by the Lieutenant-governor in Council.

3. Any arbitrator appointed by a Judge of the Supreme Court shall, for the purposes of this Act, have all the powers of a Judge of the Supreme Court.

4. An arbitrator may, if he thinks fit, submit any question of law for the decision of a Judge of the Supreme Court, and the decision of the Judge on any question of law, either on such submission, or in any case where he himself settles the matter, under

## British Columbia

this Act, shall be final, unless within the time and in accordance with the conditions prescribed by the "Court of Appeal Act" and the rules of the Supreme Court, either party appeals to the Court of Appeal; and the arbitrator appointed by a Judge of the Supreme Court shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by writ of summons in the Supreme Court.

5. The said regulations may make provision for the appearance in any arbitration under this Act of any party by some other person.

6. The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs shall not exceed the limit prescribed by said regulations, and shall be taxed in manner prescribed by the said regulations.

7. In the case of the death or refusal or inability to act of an arbitrator, a Judge of the Supreme Court may, on application of any party, appoint a new arbitrator.

8. Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by said regulations, by the said committee or arbitrator, or by any party interested, to the Registrar of the County Court for the district in which any person entitled to such compensation resides, who shall, subject to such regulations, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a County Court judgment: Provided that the County Court Judge may at any time rectify such register.

9. No Court fee shall be payable by any party in respect of any proceedings under this Act prior to the award.

10. Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs

from, the said sum awarded, except such sum as may be awarded by the arbitrator, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by the said regulations.

11. The Lieutenant-governor in Council may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or Judge may, subject to regulations made by the Lieutenant-governor in Council, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration. [60 & 61 Vict., c. 37, Sch. 2, ss. 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13]; 1902, c. 74, Sch. 2.

## MANITOBA

(L. 1910, c. 81; as am'd in 1913)

### CHAPTER 81, 1910

AN ACT respecting Compensation to Workmen for Accidental Injuries suffered in the Course of their Employment.

*[Including the amendments of 1913.]*

*His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—*

1. This Act may be cited as "The Workmen's Compensation Act, 1910." Short title.

2. The provisions of this Act shall apply only to employers who employ in their trade or business at the time the accidental injuries occur five or more workmen, or who usually or from time to time employ in their trade or business five or more workmen. Application of Act.

3. In this Act, unless the context otherwise requires—

(a) "Employer" includes the Crown, a municipal corporation, and any body of persons, corporate or unincorporate, and the legal personal representatives of a deceased employer, and where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person; Interpretation.  
"Employer."

(b) "Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labor or otherwise, but does not include any person employed otherwise than by way of manual labor whose remuneration exceeds twelve hundred dollars a year, or a person whose employment is of a casual nature or a person who is employed otherwise than for the purposes of the em- "Workman."

## Manitoba

ployer's trade or business, or an outworker; but, save as aforesaid, means any such person who has entered into or works under a contract of service or apprenticeship with an employer, in any employment to which this Act extends, whether by way of manual labor, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing; any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representatives or to his dependents or other person to whom or for whose benefit compensation is payable;

Reference to a workman includes personal representatives in case of his death.

"Dependents."

(c) "Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death for the necessities of life or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

"Member of a family."

(d) "Member of a family" means a wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, adopted child, foster parent;

"Outworker."

(e) "Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale, in his own home, or on other premises not under the control or management of the person who gave out the materials or articles;

Provision for case of a public or municipal authority or corporation.

(f) The exercise and performance of the powers and duties of a public or municipal authority or corporation shall, for the purposes of this Act, be treated as the trade or business of the authority or corporation.

## Manitoba

4. If in any employment to which this Act applies, personal injury by accident, arising out of and in the course of the employment, is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule of this Act; provided that,

Liability of employers in general.

Provided that.

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman, for a period of at least one week, from earning full wages at the work at which he was employed; and shall only be liable to pay compensation from the beginning of the second week after the injury;

No compensation unless workman disabled for more than one week.

(b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid, and if a workman elects to pursue his remedies independently of this Act he shall thereby forfeit his right to compensation under the provisions of this Act;

Workman may proceed independently of this Act in certain cases.

But employer not to be under double liability.

(c) If it is proved that any injury to a workman is attributable to his drunkenness, no compensation in respect of that injury shall be allowed; if it is proved that an injury producing partial incapacity is attributable to the serious or wilful misconduct of the workman, no compensation in respect of that injury shall be allowed; but a claim for compensation for total and permanent disability or for death shall not be disallowed only because the injuries were sustained

Drunkenness.

Injuries caused by serious or wilful misconduct of workman, when claims for allowed.



by reason of the serious or wilful misconduct of the workman;

Injuries received in attempt to rescue fellow workman.

(d) If it is proved that the injury to a workman is attributable to the rescue or attempted rescue of a fellow workman from a threatened danger while such fellow workman is upon the premises of the employer and engaged in the ordinary course of his employment, the workman shall not thereby be deprived of the benefit of this Act as if he had been guilty of serious or wilful misconduct or had acted outside the scope of his employment;

Questions arising, if not settled by agreement, to be settled by arbitration in accordance with second schedule.

(e) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies, or as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this Act, be settled by arbitration in accordance with the second schedule to this Act.

Fines under certain Acts may still be imposed.

(f) Nothing in this Act shall affect any proceedings for a fine under the enactments relating to mines, factories or workshops, or the application of such fine.

Conditions precedent to maintenance of claim. Notice of accident.

5. (a) Proceedings for the recovery of compensation for an injury under this Act shall not be maintainable unless notice in writing of the accident has been given within fourteen days from the happening thereof, or, in case any parties entitled to compensation are temporarily out of the Province, within twenty-eight days from the happening thereof, and unless notice of claim has been given within three months from the happening of the accident, and arbitration proceedings be commenced under this Act within six months from the happening thereof.

Notice of the claim.

Commencement of the arbitration proceedings.

Relief from effect of want of or any defect or inaccuracy in either of these notices.

(b) The want of or any defect or inaccuracy in such notice of accident or notice of claim shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the em-

## Manitoba

ployer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by such want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the Province or other reasonable cause, and

(c) The failure to commence proceedings within the period above specified shall not be a bar to the maintenance of such proceedings, if it is found that the failure was occasioned by mistake, absence from the Province or other reasonable cause; provided, however, that in no case may proceedings be commenced after the expiration of twelve months from the date of the accident.

Relief against failure to commence proceedings in time if caused by mistake, etc.

(d) The notice of accident shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

Contents of notice of accident.

Service of.

(e) The notice of claim shall be in writing and shall state in ordinary language the extent of the injuries sustained and the amount of compensation claimed, and the names, ages and addresses of the person or persons to whom it is claimed compensation is payable, and the grounds upon which the claim is based.

Contents of notice of claim.

(f) The notices aforesaid may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

Mode of service of notice by delivery.

(g) The said notice of accident or notice of claim may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and, if served by post, shall be deemed to have been served at the time when the letter containing the said notice would have been delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

By mailing.

## Manitoba

Service on  
body of per-  
sons corporate  
or unincor-  
porate.

(h) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter, addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

Certificate of  
Attorney-  
General  
approving  
agreement  
between  
employer and  
workman  
providing for  
a different  
scheme of  
compensation.

6. (a) If the Attorney-general, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit or insurance for the workmen of an employer, in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation, not less favorable to the workmen and their dependents than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favor of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with such scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

Adoption of  
alternative  
scheme.

Renewal of  
certificate  
after five  
years.

(b) The Attorney-general may give any such certificate to expire at the end of a limited period of not less than five years, and may from time to time renew, with or without modifications, such a certificate, to expire at the end of the period for which it is renewed.

Such scheme  
not to be  
obligatory.

(c) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

## Manitoba

(d) If complaint is made to the Attorney-general, by or on behalf of the workmen of any employer, that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (a) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Attorney-general shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

Revocation  
of certificate  
by Attorney-  
General.

(e) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Attorney-general, in the event of a difference of opinion.

If certificate  
revoked or  
expired,  
moneys held  
to be  
distributed.

(f) Whenever a scheme has been certified as aforesaid it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Attorney-general.

Employer  
to furnish  
information  
and accounts  
if demanded.

(g) The Attorney-general may make regulations for the purpose of carrying this section into effect.

Regulations.

7. (a) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and, where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the

Principal  
liable to  
workman  
employed by  
contractor  
to execute  
work.

Calculation  
of amount of  
compensation.

## Manitoba

employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Remedy over  
of principal  
against  
contractor.

(b) Where the principal is proceeded against by a workman of the contractor, the contractor on the application of the principal may be added a party to the proceedings, and the principal may in those proceedings be given a remedy over against the contractor for whatever amount of compensation and costs may have been awarded against him.

Contractor  
also directly  
liable.

(c) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

Restriction  
on application  
of this sec-  
tion.

(d) This section shall not apply in any case where the accident occurred elsewhere than on or in or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control and management.

When em-  
ployer insured  
against  
liability fails,  
his rights  
shall be  
transferred  
to and vest in  
the workman  
who may then  
recover  
against the  
insurers  
directly to  
extent of  
amount  
insured.

8. (a) Where any employer has entered into a contract with any insurers, in respect of any liability under this Act to any workman, then, in the event of the employer becoming insolvent or making an assignment for the benefit of, or a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company becoming insolvent or unable to pay its debts in full, or making an assignment for the benefit of, or a composition or arrangement with, its creditors, or having any unpaid judgment of any court against it, or having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies, and be subject to the same liabilities, as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(b) If the liability aforesaid of the insurers to the

## Manitoba

workman is less than the liability of the employer to the workman, the workman may prove for the balance in the assignment or liquidation proceedings.

Right of workman to prove for balance.

(c) There shall be included among the debts which, under "The Assignments Act" and "The Joint Stock Companies Winding-Up Act," are, in the distribution of the property in the case of an assignment, and in the distribution of the assets of a company being wound up, under the said Acts respectively, to be paid in priority to all other debts, the amount, not exceeding in any individual case five hundred dollars, due in respect of any compensation the liability for which accrued before the date of the assignment or the date of the commencement of the winding-up, and the said Acts shall have effect accordingly. When the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this Act.

Claims under this Act to extent of \$500 to be preferential in insolvency proceedings.

Commutation of weekly payments for purposes of this provision.

(d) The provisions of the foregoing subsection with respect to the preferences and priorities shall not apply where the assignor or insolvent or the company being wound up has entered into such a contract with insurers as aforesaid.

Not applicable when there is liability insurance, nor when a company is being wound up merely for purpose of reconstruction or amalgamation.

(e) This section shall not apply where a company is wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company.

When some other person legally liable,

9. Where the injury, for which compensation is payable under this Act, was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof;

(a) The workman may take proceedings either against that person to recover damages or against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to sue for or to recover both damages and compensation; and

workman may proceed either against him or his employer but not against both.

If employer has paid under this Act he shall have a remedy over against any third person legally liable for the accident.

(b) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action or by consent of the parties by arbitration under this Act.

Termination of bargain by which workman relinquishes claim for damages for personal injury.

10. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not for the purposes of this Act be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

Workman proceeding under common law forfeits his rights under this Act, and vice versa.

11. Any workman who commences proceedings to recover damages or compensation for injuries from his employer at common law, or under any statute heretofore in force, shall thereby forfeit his right to compensation for said injuries under the provisions of this Act; and any workman, whether under the age of twenty-one years or not, who elects to claim compensation under this Act, shall, upon serving his notice of claim, forfeit his right to take proceedings for the same injuries, either at common law or under any statute heretofore in force relating to the liability of an employer for injuries to a workman, and the provisions of this section may be pleaded as an answer to any such action.

Service of notice of claim upon insurers to operate as attaching order upon them,

12. Where a claim for compensation is established against an employer under the provisions of this Act, and such employer is protected wholly or partially against such liability by insurance, the workman found entitled to compensation may, by serving a notice of his claim upon the insurance company, create

## Manitoba

a lien or charge against such insurance money to the extent of the liability of the insurance company to the employer, but not exceeding the amount of the compensation awarded, and may recover against the insurance company as for a debt to that amount, subject always to any defences which may exist as between the insurance company and the employer.

their liability  
to employer.

13. Notwithstanding anything hereinbefore contained, this Act shall not apply to domestic servants; nor shall it apply to the employment of agriculture, nor to any work or machinery used on or about a farm or homestead for farm purposes or for the purposes of improving such farm or homestead, and for greater certainty, but so as not to restrict in any degree the generality of the foregoing words of this section, this Act shall not apply to any of the following employments on a farm:

Restrictions  
on application  
of Act.

(a) Threshing, cleaning, crushing, grinding or otherwise treating grain, or sawing wood, posts, lumber or other wooden material, or otherwise treating the same, or the pressing of hay, by any kind of machinery or motive power, and whether such machinery or motive power be portable or stationary, and whether the same be owned and operated by the farmer or farmers for whose purpose the same is being used, or by any other farmer or other person for gain, profit or reward;

Certain farm  
operations  
not included.

(b) The construction, repair, or demolition of any farm building, windmill, derrick or other structure.

14. The schedules to this Act form part hereof and shall have the same force and effect as if hereinbefore embodied.

Schedules.

15. This Act shall come into force on the first day of January, 1911, but shall not apply in any case where the accident happened before the coming into force hereof.

When Act in  
force.



## SCHEDULES

Unless the context otherwise requires—

Interpretation  
"court" or  
"County  
Court."

(a) The words "court" or "County Court" when used in these schedules shall mean the County Court of the division in which all the parties concerned reside, or, if they reside in different divisions, then of the division in which the accident occurred, or any Judge of such County Court;

"Rules of  
court."

(b) "Rules of court" shall mean rules of court made and promulgated as provided by "The County Courts Act."

## FIRST SCHEDULE

Scale of  
compensation  
in the dif-  
ferent cases  
specified.

1. The amount of compensation under this Act and the rules with regard to the same shall be:

(a) Where death results from the injury—

(1) If the workman leaves any dependents residing within the British Empire wholly dependent upon his earnings for the necessities of life, a sum not exceeding the sum of fifteen hundred dollars; provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum;

(2) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings residing within the British Empire, such sum, not exceeding in any case the sum of fifteen hundred dollars, as may be agreed upon, or, in default of agreement, may be determined by arbitration under this Act to be reasonable and proportionate to the injury to the said dependents; and

Dependents  
not resident  
in the British  
Empire have  
no claim.

(3) Such compensation to dependents shall be limited to those dependents who are resident within the British Empire at the time of the accident, and the removal of any dependent from the British Empire before payment in full of any compensation awarded

## Manitoba

under the provisions of this Act shall disentitle such dependent to further payments on account of such compensation;

(4) If the workman leaves no dependents entitled to compensation, the reasonable expenses of his medical attendances and burial, not exceeding one hundred dollars;

(5) Where death results from the injury and compensation is awarded to dependents, the money shall be paid into court, to be paid out in such sums and at such times as the court may direct.

(b) Where total or partial incapacity for work results from the injury,

(1) A weekly payment during the incapacity, not exceeding fifty per cent of the diminution which the accident shall have caused to the wage earning capacity of the workman, to be measured by his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer;

(2) Provided that, where the injured workman is not a journeyman working at his own trade, he shall only be entitled to twenty-five per cent of such diminution for the first month of his employment with the employer against whom he claims compensation, and to forty per cent of such diminution for the second month, and thereafter fifty per cent as hereinbefore provided;

(3) Provided further that in no case shall compensation be payable in respect of the first week following the injury, nor shall the total compensation payable in respect to total or partial incapacity exceed the sum of fifteen hundred dollars, nor shall the weekly payment exceed ten dollars to an adult workman or six dollars to an apprentice.

Limitations  
on amounts  
payable.

2. For the purposes of the provisions of this schedule relating to "average weekly earnings" of a workman, the following rules shall be observed:—

Rules for  
computation  
of average  
weekly  
earnings.

(1) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated; provided that, where, by reason of the shortness of the time during which the workman has been in the employment of his employer, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(2) Where the workman has entered into concurrent contracts of service with two or more employers, under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(3) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(4) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed by him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

3. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may receive from the employer during the period of his incapacity, and, in the case of partial incapacity, the weekly payment shall in no case exceed fifty per cent of the difference

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Manitoba

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between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or able to earn in some suitable employment or business after the accident.

4. Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

Medical  
examination  
of claimant.

5. The money payable in case of death shall, unless otherwise ordered as hereinafter provided, be paid into court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied or otherwise dealt with by the court in such manner as the court, in its discretion, thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the clerk of the court shall be sufficient discharge in respect of the amount paid in; provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependents, be made to his legal personal representative, or, if he has no such representative, to the persons to whom the expenses of medical attendance and burial were due.

Payment  
into court  
in case  
of death.

6. Rules of court may provide for the transfer of money paid into court under this Act from one court to another court in the Province.

7. Where a weekly payment is payable under this Act to a person under any legal disability, the court may, on application being made in accordance with the rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall

Or when persons  
entitled  
are under any  
legal  
disability.

## Manitoba

apply to sums paid into court in pursuance of any such order.

Settlement  
of questions  
as to who is  
a dependent  
and other  
matters.

8. Any question as to who is a dependent shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the court, and the amount payable to each dependent shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the court; where there are both total and partial dependents, nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

Varying  
former order  
of court on  
award.

9. Where, on application being made in accordance with rules of court, it appears to the court that, on account of neglect of children on the part of the widow, or on account of the variation of the circumstances of the various dependents, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependents of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

Investments.

10. Any sum which under this schedule is ordered to be invested may be invested in whole or in part in securities or investments approved by the court in the name of the court and only to be paid out on order.

Medical  
examination  
of persons  
receiving  
weekly  
payments.

11. Any workman receiving weekly payments under this Act shall, if so required by the employer from time to time, but not oftener than once every three months except by order of a judge, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer; if the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly

## Manitoba

payments shall be suspended until such examination has taken place.

12. A workman shall not be required to submit himself for examination by a medical practitioner under paragraph 4 or paragraph 11 of this schedule otherwise than in accordance with the rules of court, or at more frequent intervals than may be prescribed by those rules. Where a workman has so submitted himself for examination by a medical practitioner or by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition, or fitness for employment, the court, on application, may, on payment by the applicant of such fee, not exceeding ten dollars, as may be prescribed, refer the matter to a medical referee appointed by the Lieutenant-governor-in-council. The medical referee to whom the matter is so referred shall, in accordance with the rules of court, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified. Where no agreement can be come to between the employer and the workman, as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any rules of court, apply as if the question were a question as to the condition of the workman. If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a work-

Rules as  
to such  
examinations.

man in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place. Rules of court may be made for prescribing the manner in which documents are to be furnished or served, and applications made under this paragraph, and the forms to be used for those purposes, and as to the fee to be paid under this paragraph.

Review and  
variation of  
weekly  
payments.

13. Any weekly payment may be reviewed at the request of either the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of the payment shall, in default of agreement, be settled by arbitration under this Act; and in case of fatal accidents compensation shall cease to any dependent as soon as, in the opinion of the judge, such dependent is capable of self support.

Appointment  
of Medical  
Referee by  
Government.

14. There shall be a medical referee or referees appointed by the Lieutenant-governor-in-council and paid by the Province, whose decision in case of disagreements between the physician of the workman and of the employer shall be final; one of such referees shall sit with an arbitrator upon request as an assessor in fixing compensation.

Redemption  
of future  
weekly  
payments by  
lump sum  
fixed by the  
court.

15. Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as the court shall deem just, but which shall, including the amounts already paid, not exceed the sum of fifteen hundred dollars, and such lump sum may be ordered by the court to be invested or otherwise applied for the benefit of the person entitled thereto; provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

Payments not  
transferable  
or subject to  
attachment.

16. A weekly payment or a sum paid by way of redemption thereof, shall not be capable of being

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Manitoba

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assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

17. Where under this schedule a right to compensation is suspended, no compensation shall be payable in respect to the period of suspension.

In case of  
suspension of  
right to  
compensation.

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SECOND SCHEDULE

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1. For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

Arbitration by  
committee.

2. If either party objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or, in the absence of agreement, by the court, according to the procedure prescribed by rules of court.

By single  
arbitrator.

3. Rules of court shall be made and amended as often as may be considered advisable by the board of County Court judges for the purpose of determining and regulating the procedure and practice under this Act; such rules shall be published forthwith after the making thereof in *The Manitoba Gazette*.

Rules of  
court.

4. Any other Act of the Legislature of Manitoba referring to arbitration shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the County Court, and the decision of the judge on any question

Submission  
of a question  
of law to  
judge.



## Manitoba

of law, either on such submission or in any case where he, himself, settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by the statute governing appeals from the County court either party appeals to the Court of Appeal. The court shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the court.

Appeals to  
Court of  
Appeal.

5. The court may summon a medical referee to sit with the court as an assessor.

6. Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

Costs.

7. The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator or court, and shall be taxed or fixed by such committee, arbitrator, or court; provided, however, that the amount of such costs shall not exceed twenty-five dollars.

Costs of  
appeal.

8. In the event of an appeal to the Court of Appeal under the provisions of section 4 of this schedule, the costs of such appeal shall be in the discretion of the court, subject to the provisions of the rules of court.

Appointment  
of new  
arbitrator.

9. In the case of the death or refusal or inability to act of an arbitrator, the court may, on the application of any party, appoint a new arbitrator.

Memorandum  
of.

10. Where the amount of compensation under this Act has been ascertained or any weekly payments varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the clerk of the court, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon

Recording  
decisions  
with clerk  
of court,

it then  
becomes en-  
forceable as  
a judgment.

## Manitoba

the memorandum shall for all purposes be enforceable as a judgment of the court; provided that—

(a) No such memorandum shall be recorded before seven days after the despatch by the clerk of notice to the parties interested; and

(b) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the court, under the circumstances, may think just; and

When not to be recorded.

(c) The court may at any time rectify the register; and

Rectification of register.

(d) Where it appears to the judge, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability or to dependents, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to allow the memorandum of the agreement to be recorded, and may deal with the matter in accordance with rules of court, and make such order (including an order as to any sum already paid under the agreement) as under the circumstances may seem just; and

Application to judge to refuse registration of agreement.

(e) The court may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability or to dependents, has been recorded in the register, order that the record be removed from the register on proof to the satisfaction

Removal of memorandum from register.

of the court that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances may seem just.

Agreements  
not registered  
not to be  
binding.

11. An agreement as to the redemption of a weekly payment by a lump sum, if not registered in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement exempt the person by whom the weekly payment is payable, from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependents, if not so registered, shall not nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

Duties of  
officers of  
the court.

12. The duties of County Courts under this Act shall, subject to rules of court, be part of the duties of such courts, and the officers of such courts shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects such courts and proceedings therein, or before any arbitrator appointed under the provisions of this Act.

No court fees  
payable  
except as  
prescribed

13. No court fee, except such as may be prescribed by rules of court, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

Payment of  
compensation.

14. Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act or

## Manitoba

to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded and agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

Rights of solicitors and agents restricted.

15. Any committee, arbitrator, or court may, subject to rules of court, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

Submission to medical referee.

16. The attorney-general may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on courts or judges thereof, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisoes (d) and (e) of paragraph 10 of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the attorney-general to be necessary or proper for the purposes of the order.

Power of the Attorney-General.

## **NEW BRUNSWICK .**

(Consolidated L. 1903, cs. 79 and 146; as am'd 1912)

### **II. PARENTS, WIVES AND CHILDREN**

#### **CHAPTER 79, CONSOLIDATED STATUTES 1903**

##### **RESPECTING COMPENSATION TO RELATIVES OF PERSONS KILLED BY WRONGFUL ACT, NEGLIGENCE OR DEFAULT**

1. Whenever hereafter the death of any person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued), have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case the person or body corporate who would have been liable, if death had not ensued; shall be liable to an action for damages, notwithstanding the death of the person injured. C. S. c. 86, s. 1.

2. Every such action shall be for the benefit of the wife, husband, parent, and child, or either of them, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages, by way of fair compensation as they may think proportionate to the pecuniary loss resulting from such death, to the parties respectively for whom and for whose benefit such action shall be brought; provided that for the purposes of this Chapter the reasonable expectation of pecuniary benefit, from the continuance of the life of the deceased, shall not be estimated for a period exceeding ten years. C. S. c. 86, s. 2.

3. Any expenses incurred or pecuniary loss sustained prior to his death by the person injured, and in consequence of such injury, and which would have been recoverable as damages by the person injured if death had not ensued, may also be recovered in such action; and such amount as may be found by the jury in respect thereof shall be held by the executor or the administrator as assets of the estate of the deceased. C. S. c. 86, s. 3.

4. The amount recovered in such action after deducting the

## New Brunswick

costs and expenses in respect thereof not recovered from the defendant, shall be divided amongst the several parties for whose benefit the action is brought, whether wife, husband, parent, child, or executor or administrator in such shares or amounts as the jury by their verdict shall find and direct. C. S. c. 86, s. 4.

5. Not more than one action shall lie for and in respect of the same subject matter of complaint under this Chapter; and every such action shall be commenced within twelve calendar months after the death of such deceased person. C. S. c. 86, s. 5.

6. In every such action the plaintiff shall be required together with the declaration, to deliver to the defendant or his Attorney, as the case may be, a full particular of the person or persons for whom or on whose behalf such action shall be brought, and of the manner in which the pecuniary loss to the different persons for whose benefit the action is brought is alleged to have arisen. C. S. c. 86, s. 6.

7. The word "parent" shall include father and mother and grandfather and grandmother, and the word "child" shall include son and daughter and grandson and granddaughter. C. S. c. 86, s. 7.

## CHAPTER 146, CONSOLIDATED STATUTES, 1903

RESPECTING COMPENSATION BY EMPLOYERS FOR INJURIES TO  
WORKMEN

1. This Chapter may be cited as "THE WORKMEN'S COMPENSATION FOR INJURIES ACT." 3 Edw. VII. c. 11, s. 1.

2. In this Chapter unless the context otherwise requires:

(1) "Superintendence" means such general superintendence over workmen as is exercised by a foreman or a person in a like position to a foreman, whether the person exercising superintendence is, or is not, ordinarily engaged in manual labor.

(2) "Employer" includes a body of persons, corporate or incorporate, and also the legal personal representatives of a deceased employer, and the person liable to pay compensation under section 4 of this Chapter.

(3) "Workman" does not include a domestic or menial servant, or servant in husbandry, gardening or fruit growing, or in mining or quarrying or lumbering or in driving, rafting or booming logs,

where the personal injury caused to any such servant has been occasioned by or has arisen from or in the usual course of his work or employment as a domestic or menial servant, or as a servant in husbandry, gardening or fruit growing, or in mining or quarrying or lumbering, driving, rafting or booming logs; but, save as aforesaid, means any railway servant, ship laborer, long-shoreman, and any person who, being a laborer, servant, journeyman, artificer, handy-craftsman, or otherwise engaged in manual labor, whether under the age of twenty-one years or above that age, has entered into, or works under, a contract with an employer, whether the contract was made before or after the passing of this Chapter, and whether such contract is expressed or implied, oral, or in writing, and is a contract of service, or a contract personally to execute any work or labor.

(4) "Railway servant" means and includes a railway servant, tramway servant and street railway servant. 3 Edw. VII, c. 11, s. 2.

3. Where personal injury is caused to a workman:

(a) By reason of any defect in the condition or arrangement of the ways, works, machinery, plant, building or premises connected with, intended for or used in the business of the employer; or

(b) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him while in the exercise of such superintendence; or

(c) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(d) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer or in obedience to particular instructions given by the employer, or by any person delegated with the authority of the employer in that behalf; or

(e) By reason of the negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine or train upon a railway, tramway, or a street railway; or

## New Brunswick

(f) By reason of the negligence of any person in the service of the employer who has charge or control of any engine, winch, machinery, sling or other appliance on or connected with any steamship or on or connected with any scow or other vessel from or into which any cargo is being loaded or discharged into or from such steamship where such engine, winch, machinery, sling or other appliances are being used in or about the loading or discharge of cargo in respect to which such workman is employed;

the workman, or in case the injury results in death, the legal representatives of the workman, and any person entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work. 3 Edw. VII. c. 11, s. 3.

4. (1) Where the execution of any work has been carried into effect under any contract; and

(a) The person for whom the work or any part thereof is done, owns or supplies any ways, works, machinery, plant, buildings or premises used for the purpose of executing the work; and

(b) By reason of any defect in the condition or arrangement of such ways, works, machinery, plant, buildings, or premises, personal injury is caused to any workman employed by the contractor, or by any subcontractor; and

(c) The defect, or failure to discover or remedy the defect arose from the negligence of the person for whom the work or any part thereof is done, or of some person being in his service and entrusted by him with the duty of seeing that such condition or arrangement is proper;

the person for whom the work or that part of the work is done, shall be liable to pay compensation for the injury as if this section had not been enacted; so, however, that double compensation shall not be recoverable for the same injury.

(2) Nothing in this section contained shall affect any rights or liabilities of the person for whom the work is done, and the contractor and sub-contractor (if any) as between themselves. 3 Edw. VII. c. 11, s. 4.

5. A workman, or his legal representatives, or any person



entitled in case of his death, shall not be entitled under this Chapter to any right of compensation or remedy against the employer in any of the following cases:—

(a) Where personal injury is caused to such workman by reason of any defect in the condition or arrangement of the ways, work, machinery, plant, building or premises of the employer, unless such defect was not discovered or remedied owing to the negligence of the employer, or of some person entrusted by him with the duty of seeing that such condition or arrangement is proper;

(b) Where personal injury is caused to such workman by reason of the act or omission of any person in the service of the employer, done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by the employer, or by any person delegated with the authority of the employer in that behalf, unless the injury resulted from some impropriety or defect in such rules, by-laws, or instructions; provided, where a rule or by-law has been approved or has been accepted as a proper rule or by-law by the Lieutenant-governor-in-council under and pursuant to any provision in that behalf of any statute in force in the Province, it shall not be deemed for the purposes of this chapter to be an improper or defective rule or by-law;

(c) In any case where the workman knew of the defect or negligence which caused his injury and failed, without reasonable excuse to give or cause to be given within a reasonable time information thereof to the employer, or some person in charge of the particular work in connection with which the injury was sustained, or some person occupying the position of superintendent or foreman of the employer, unless he was aware that the employer, or such person so in charge of the work, or such superintendent or foreman, already knew of the same defect or negligence; provided, however, that such workman shall not, by reason only of his continuing in the employment of the employer with knowledge of the defect, negligence, act or omission, be deemed to have voluntarily incurred the risk of injury.

3 Edw. VII. c. 11, s. 5.

6. The amount of compensation recoverable under this Chapter

## New Brunswick

shall not exceed either such sum as is found to be equivalent to the estimated earnings during three years preceding the injury of a person in the same grade employed during those years in the like employment within this Province, or the sum of fifteen hundred dollars, whichever is larger; and such compensation shall not be subject to any deduction or abatement by reason or on account or in respect of any matter or thing whatsoever, except as is specially provided in section 9 of this Chapter. 3 Edw. VII. c. 11, s. 6.

(7) Subject to the provisions of sections 10 and 11, an action under this Chapter for the recovery of compensation for an injury shall not be maintainable against the employer of the workman, unless notice that injury has been sustained is given within twelve weeks and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months of the time of death; provided, always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge is of opinion that there was reasonable excuse for such want of notice. 3. Edw. VII. c. 11, s. 7.

8. Notwithstanding anything in this Chapter contained, an action under any of the provisions of this Chapter to secure compensation for injuries to a workman may be maintained against the legal personal representatives of a deceased employer. 3 Edw. VII. c. 11, s. 8.

9. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under or through a workman, in respect to any cause of action arising under this Chapter, any penalty or damages, or part of a penalty or damages, which may in pursuance of any other Act either of the parliament of Canada or of the Legislature of New Brunswick, have been paid to such workman, representatives or persons in respect of the same cause of action; and where an action has been brought under this Chapter by any workman, or the representatives of any workman, or any person claiming by or under or through such workman, for compensation in respect of any cause of action arising under this Chapter, and payment has not previously been made of any penalty or damages, or part of a penalty or damages under any such Act in respect

to the same cause of action, such workman, representatives or persons shall not, so far as the Legislature of this Province has power to enact, be entitled thereafter to receive in respect to the same cause of action any such penalty or damages under any such last mentioned Act. 3 Edw. VII. c. 11, s. 9.

10. (1) Notice in respect of any injury under this Chapter shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

(2) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(3) The notice may also be served by post, by a registered letter addressed to the person on whom it is to be served, at his last known place of residence or place of business, and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient proof that the notice was properly addressed and registered.

(4) Where the employer is a body of persons corporate or incorporate, notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office of such employer, or, if there be more than one office, at any one of such offices.

(5) The want of insufficiency of the notice required by this section, or by section 7 of this Chapter, shall not be a bar to the maintenance of an action for the recovery of compensation for the injury, if the court or judge before whom such action is tried, or in case of appeal, if the court hearing the appeal, is of opinion that there was reasonable excuse for the want or insufficiency, and that the defendant has not been thereby prejudiced in his defence.

(6) A notice under this section shall be deemed sufficient if in the form in the Schedule hereto or to the like effect. 3 Edw. VII. c. 11, s. 10.

11. If the defendant in any action against an employer for compensation for an injury sustained by a workman in the course of his employment intends to rely for a defence on the want of

## New Brunswick

notice, or the insufficiency of notice, or on the ground that he was not the employer of the workman injured, he shall, not less than seven days before the hearing of the action, give notice to the plaintiff of his intention to rely on that defence, and the court may in its discretion, and upon such terms and conditions as are just, order and allow an adjournment of the trial for the purpose of enabling such notice to be given and subject to any such terms and conditions any notice given pursuant to and in compliance with the order in that behalf shall, as to such action and for all the purposes thereof, be held to be a notice given under and in accordance with sections 7 and 10 of this Chapter. 3 Edw. VII, c. 11, s. 11.

12. In any action brought under this Chapter, the declaration shall state in ordinary language the cause of the injury and the date at which it was sustained and the amount of compensation claimed, and where the injury of which the plaintiff complains has arisen by reason of the negligence, act or omission of any person in the service of the defendant, the declaration shall give a reliable description of such person. 3 Edw. VII. c. 11, s. 12.

13. No contract or agreement made or entered into by a workman shall be a bar or constitute any defence to an action for the recovery under this Chapter of compensation for an injury:

(a) Unless for such workman entering into or making such contract or agreement there was other consideration than that of his being taken into or continued in the employment of the defendant; or

(b) Unless such other consideration was, in the opinion of the court or judge before whom such action is tried, ample and adequate; or

(c) Unless, in the opinion of the Court or Judge, such contract or agreement in view of such other consideration, was not on the part of the workman improvident, but was just and reasonable; and the burden of proof in respect to such other consideration and of the same being ample and adequate, and that the contract was just and reasonable, and was not improvident, shall in all cases rest upon the defendant. 3 Edw. VII. c. 11, s. 13.

14. When the injury was caused by the personal negligence or wilful act of the employer (or of some person for whose act

## New Brunswick

or default the employer is responsible) nothing in this Chapter shall affect any civil liability of the employer; but in that case the workman may, at his option, either claim compensation under this Chapter, or take the same proceedings as were open to him immediately preceding the passing of this Chapter, but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment, both independently of and also under this Chapter. 3 Edw. VII. c. 11, s. 14.

15. A defendant may by notice to the opposite party, to be given or served at least six days before the day appointed for the trial of the action, admit the truth of any statement of his liability for any alleged negligence, act or omission as set forth or contained in the plaintiff's declaration or particulars of claim in the action, and after such notice given the plaintiff shall not be allowed any expense thereafter incurred for the purpose of proving the matters so admitted. 3 Edw. VII. c. 11, s. 15.

16. Where the time for doing any act, taking any proceeding, or giving any notice under or required by this Chapter, expires on a holiday, such act or proceeding or notice shall, so far as regards the time of doing, taking, or giving the same, be held to be duly and sufficiently done, taken or given, if done, taken or given on the next day thereafter which is not a holiday. 3 Edw. VII. c. 11, s. 16.

## SCHEDULE

## FORM OF NOTICE

## (Section 7)

To A. B. (*here insert the employer's address*) (*or to the company or as the case may be*)

Take notice that on the                      day of                      19     , C. D. (*insert address of injured person*), a workman in your employment, sustained personal injury (*add "of which he died," if such is the case*), and that such injury was caused by (*state shortly the cause of the injury, e. g., the fall of a beam*).

Dated, etc.

Yours etc.,

(Signature.)

## CAP. XXVI

AN ACT to amend Chapter 146 of the Consolidated Statutes, 1903, being "The Workmen's Compensation for Injuries Act."

Sec.

1. Paragraph (c) of Section 4, (1) of the Workmen's Compensation for Injuries Act repealed and new paragraph (c) substituted.

2. Proceeding may be by way of petition in lieu of action; order for compensation when filed with Clerk or Registrar to have the force of a judgment.

Sec.

3. Clerk or Registrar to make rules to carry out Act.

5. Judge may award costs.

Passed 13th April, 1907.

Be it enacted by the Lieutenant Governor and Legislative Assembly as follows:—

1. Paragraph (c) of Section 4 (1) of "The Workmen's Compensation for Injuries Act" is hereby repealed and the following substituted therefor:

"(c) The defect or failure to discover or remedy the defect arose from the negligence of the persons for whom the work or any part thereof is done, or of some person being in his service and entrusted by him with the duty of seeing that such condition or arrangement is proper, the person for whom the work or that part of the work is done, shall be liable to pay compensation for the injury as if the workman had been employed by him, and for that purpose, be deemed to be the employer of the workman within the meaning of this Act; provided, always, that any such contractor or sub-contractor shall be liable to pay compensation for the injury as if this section had not been enacted; and also, provided, that double compensation shall not be recoverable for the same injury."

2. (1) If any person or the representatives of any persons, are desirous of claiming compensation under the said Act, he or they may, instead of bringing an action in the ordinary way,

proceed summarily by petition to a Judge of the Supreme Court, or, after "The Judicature Act, 1906," is brought into force, to a Judge of the Supreme Court of Judicature, which shall set forth in brief form the particulars of the claim, and the circumstances upon which it is founded, and the Judge may, after such reasonable notice or notices to the party against whom compensation is sought as he may deem proper, proceed in a summary way to hear such petition on the merits, without regard to technicalities, and shall decide the case as he may deem just and equitable, having regard to the principles laid down in, and the provisions of the said Act. There shall be no appeal from the decision of such judge which shall be final and conclusive, provided the amount, if any, allowed to the claimant, is not greater than is provided for by said Act. On the hearing of such petition, the witnesses shall be examined under oath, which oath the Judge is hereby authorized to administer; he may also make orders for the attendance before him of such witness or witnesses as he may deem necessary, and any witness who has been served with such order, and who refuses or neglects to attend before the judge and give evidence pursuant to such orders shall be guilty of contempt of court, and liable to be punished therefor by attachment.

(2) Any order which the judge may make for the payment of the amount to which he may find the claimant entitled, and costs, if he award costs, or against the claimant for costs, in case the petition is dismissed shall, upon being filed with the Clerk of the Pleas, or with the Registrar of the Supreme Court after the said The Judicature Act, 1906, is brought into operation, have the same force and effect as a judgment in the Supreme Court, and execution may be issued thereon, the same as upon such judgment.

(3) The said Clerk or Registrar, as the case may be, shall make and establish any necessary forms, rules or orders for the better carrying out the provisions of this Act, which forms, rules and orders shall be as valid as if enacted as part of this Act.

(4) The Judge may, or may not, award costs to either party, as to him may seem just, and if he allows costs, he shall tax and fix the amount thereof. In no case shall he award more than twenty-five dollars costs against the petitioner, or more than one hundred dollars costs against the respondent.

## CAP. XXXI

AN ACT to further amend Chapter 146 of "The Consolidated Statutes, 1903," being "The Workmen's Compensation for Injuries Act."

Sec.

1. Sub-sec. 3 of sec. 2 of c. 146, C. S. 1903, repealed, and new sub-sec. substituted; new sub-sec. added to sec. 2.
2. Sec. 3 repealed and new sec. substituted.
3. Sub-sec (1) of sec. 4 and sec. 1 of c. 26, 7 Ed. VII., repealed and new sections substituted.
4. Paragraphs (a) and (b) of sec. 5 repealed and new paragraphs substituted, and new paragraph added.

Sec.

5. Sec. 6 repealed and new sec. substituted.
6. Provisions of said c. 146, C. S. 1903, and of c. 26, Acts 1907, repealed in so far as inconsistent with this Act.
7. Sec. 7 amended.
8. When this Act to come into force.

Passed 30th May, 1908.

Be it enacted by the Lieutenant-governor and Legislative Assembly as follows:

1. Section 2, sub-section 3, of "The Workmen's Compensation for Injuries Act" is hereby repealed, and the following enacted in lieu thereof:

(3) "Workman does not include a person whose employment is of a casual nature and otherwise than for the purpose of the employer's trade or business, or a domestic or menial servant, or a servant in husbandry, gardening or fruit growing, or granite working, or in lumbering, or in driving, rafting or booming logs, or a person employed as a clerk in an office or in a wholesale or retail shop or store, or a person employed as a seaman or fisherman, where the personal injury caused to any such servant or person has been occasioned by or has arisen from, or in the usual course of his work or employment as a domestic or menial servant, or as a servant in husbandry, gardening or fruit growing, or in granite working or in lumbering, or in driving, rafting or booming logs, or as a clerk in



an office or in a wholesale or retail shop or store, or as a seaman or fisherman, but save as aforesaid, means any railway servant, ship laborer, longshoreman, quarryman, miner, pondman, and any person who, being a laborer, servant, journeyman, artificer, handy-craftsman, or otherwise engaged in manual labor, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract was made before or after the passing of this Act, and whether such contract is expressed or implied, oral or in writing, and is a contract of service or a contract personally to execute any work or labor.

Section 2 of said Act is further amended by adding thereto the following:

(5) "Dependents" means and includes only the workman's wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother or half-sister.

Section 3 of said Act is hereby repealed, and the following enacted in lieu thereof:

"3. Where personal injury is caused to a workman:

"(a) By reason of any defect in the condition or arrangement of the ways, works, machinery, gear, appliances, plant, scow, boat, vessel, building, or premises connected with, intended for, or used in the business of the employer; or

"(b) By reason of the negligence of the employer or any person in the service of the employer; or

"(c) By reason of the act or omission of any person in the service of the employer; done or made, in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by the employer, or by any person delegated with the authority of the employer in that behalf. The workmen, or in case the injury results in death, the legal representatives of the workman, and any person entitled, in case of death, shall have the same right of compensation and remedies against the employer, as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

## New Brunswick

3. Section 4, sub-section (1) of said Act, and Section 1 of Chapter 26 of Acts 7, Edward VII., are hereby repealed, and the following enacted in lieu thereof:

"(1) Where any work is being carried on under any contract, and,

"(a) The person for whom the work or any part thereof is done, supplies any ways, works, machinery, gear, appliances, plant, scow, boat, vessel, building or premises used for the purpose of executing the work; and

"(b) By reason of any defect in the condition or arrangement of such ways, works, machinery, gear, appliances, plant, scow, boat, vessel, building or premises, personal injury is caused to any workman employed by the contractor, or by any sub-contractor; the person for whom the work, or that part of the work, is done, shall be liable to pay compensation for the injury as if the workman had been employed by him, and for that purpose be deemed to be the employer of the workman within the meaning of this Act; provided, always, that any such contractor or sub-contractor shall be liable to pay compensation for the injury as if this section had not been enacted; and also, provided that double compensation shall not be recoverable for the same injury."

4. Paragraphs (a) and (b) of Section 5 of said Act are hereby repealed, and the following enacted in lieu thereof:

"(a) Where personal injury is caused to such workman by reason of his own wilful act, with intent to cause personal injury, or by reason of his own neglect, or carelessness, or by reason of disobedience of rules, orders or by-laws of the employer, contractor, or sub-contractor; provided, always, that printed or typewritten copies of such rules, orders, and by-laws have been posted and kept posted in a conspicuous position in the different places where the workmen carry on their work;

"(b) Where personal injury is caused to such workman by reason of the malicious act or malicious neglect of a fellow workman with intent to cause personal injury,"

Also to said Section 5 add the following, to be paragraph (d).

"(d) Where the workman is injured or killed, through the negligence of a fellow workman, who at the time when

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New Brunswick

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such negligent act was committed, was under the influence of intoxicating liquors, unless the workman so injured or killed, on becoming aware of the condition of his fellow workman, and within a reasonable time thereafter notified the foreman or any other person in charge of any work, that his fellow workman was under the influence of intoxicating liquors as aforesaid."

5. Section 6 of said Act is hereby repealed and the following enacted in lieu thereof:

"6. The amount of compensation under this Act shall be (1) where death results from the injury;

"(a) If the workman leaves any dependents who, at the time of his death reside in Canada and are partly or wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, but not exceeding in any case fifteen hundred dollars (\$1,500); provided, that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

"(b) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding seventy-five (\$75.00)."

(2) Where the total or partial incapacity for work results from the injury, a weekly payment during the incapacity, not exceeding fifty per cent of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period, during which he has been in the employment of the same employer, such weekly payment not to exceed ten dollars (\$10.00) provided, that:

(a) If the incapacity lasts less than two weeks no compensation shall be payable in respect to the first week; and

(b) If the incapacity lasts for more than one hundred weeks, compensation shall be payable in respect to the first hundred weeks only; and

## New Brunswick

(c) Where a workman has given notice of an accident, he shall, if so required by the employer submit himself for examination once in each week after such accident, by a duly qualified medical practitioner, provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, he shall not be entitled to compensation, or to take any proceedings to recover compensation under this Act, during the time covered by such refusal or obstruction.

6. The provisions of Chapter 146 of "The Consolidated Statutes 1903," being "The Workmen's Compensation for Injuries Act," and of Chapter 26 of the Acts of the Legislative Assembly, A. D. 1907, in amendment thereof in so far as they are inconsistent herewith, are hereby repealed.

7. Section 7 of Chapter 146 of Consolidated Statutes 1903, is amended, as follows: Strike out the words "Twelve weeks and" in line 5 thereof, and substituting therefor the following: "Two weeks, except in case where reasonable excuse is furnished for failure to give such notice within said time, and such notice is given as soon thereafter as possible, and unless."

8. This Act shall come into force on and after the first day of November in the year nineteen hundred and eight.

## CAP. XLIII

AN ACT to amend Chapter 146 of "The Consolidated Statutes, 1903," being "The Workmen's Compensation for Injuries Act," and Acts in amendment thereof.

## Sec.

1. Sub-section (1) of Sec. 2, 7, Edward VII., Cap. 26, amended.
2. Sub-section (2) of said section 2 of said Act amended.
3. Application of provisions of Secs. 1 and 2 of this Act.
4. How notices, etc., to be

## Sec.

- served when employer a non-resident.
5. In what case Order XLVIII, Rules of the Supreme Court, 1909, shall apply.
6. Proceedings to which Orders XXI and XXXII shall apply.
7. Application of this Act.

Passed 13th April, 1911.

Be it enacted by the Lieutenant-governor and Legislative Assembly, as follows:—

1. Sub-section (1) of Section 2 of the Act, 7 Edward VII., Chapter 26, is hereby amended, by striking out the words "or after The Judicature Act, 1906, is brought into force, to a Judge of the Supreme Court of Judicature" in the fifth, sixth and seventh lines thereof.

2. Sub-section two of Section 2 of the said Act is hereby amended by substituting "1909" for "1906" in the seventh line thereof and by adding thereto the following:

(2) *a.* In case the Judge shall make an order for a weekly payment during the incapacity of the workman; prospectively, an execution may be issued thereon for the amount due up to the time of the issue of said execution and also for the aggregate amount of the weekly payments up to the end of the period for which the same shall have been prospectively awarded. The said aggregate amount shall be diminished by discounting the same at the rate of four per centum per annum for the period from the issue of such execution to the date of the last payment so awarded.

3. The foregoing provisions of this Act shall apply to all weekly payments prospectively awarded by a judge or by a jury under sub-section 2 of Section 6 of "The Workmen's Compensation for Injuries Act."

4. In case the employer against whom a petition shall be presented under the said Act, 7 Edward VII., Chapter 26, shall not be a resident of the Province, all notices and other documents and proceedings may, by leave of the Judge, be served as provided by Section 10 of Chapter 146 of The Consolidated Statutes, 1903, on any ostensible agent or attorney of such employer who resides within the said Province.

5. If the employer shall be a firm or person carrying on business in a name other than his own, whether within the Province or not, the provisions of order XLVIII.—A of The Rules of the Supreme Court, 1909 shall apply, so far as the same may be capable of being applied to a petition and proceedings thereupon.

6. The provisions of Orders XXI and XXXII of the Rules of the Supreme Court, 1909, shall also apply to proceedings under a petition, together with such other of the said rules as the judge

## New Brunswick

hearing the petition, shall consider applicable to the circumstances of the case and calculated to expedite and ensure justice therein.

7. The provisions of this Act shall apply to all cases arising since the passing of said Act, 7 Edward VII., Chapter 26.

## CAP. XXXII

AN ACT to further amend "Chapter 146 of the Consolidated Statutes, 1903," being "The Workmen's Compensation for Injuries Act."

## Sec.

1. Sub-sec. (3) of Sec. 2 of "The Workmen's Compensation for Injuries Act," and Sec. 1 of 8 Edw. VII., C. 31, repealed and new sub-section enacted.
2. Sub-sec. 1 (a) Sec. 5 of 8 Edw. VII., repealed, and new section enacted.
3. The first clause of sub-sec. (2) of Sec. 5 of 8 Edw. VII., C. 31, repealed, and new clause enacted.

## Sec.

4. Sub-sec. (b) of sub-sec. (2) of Sec. 5, 8 Edw. VII., c. 31, repealed, and new sub-section enacted.
5. Sec. 7 of 8 Edw. VII., c. 31, repealed, and new section enacted.
6. Sec. 6 of 1 George V., c. 43, amended.
7. Provisions of Act not to entitle a workman to greater compensation for personal injury than payable before.

Passed 20th April, 1912.

Be it enacted by the Lieutenant-governor and Legislative Assembly, as follows:

1. Section 2, sub-section (3) of "The Workmen's Compensation for Injuries Act," and Section 1 of 8 Edward VII., Chapter 31, being "An Act in further amendment of Chapter 146 of the Consolidated Statutes, 1903," being "The Workmen's Compensation for Injuries Act," are hereby repealed and the following enacted in lieu thereof:

"(3) 'Workman' does not include a person whose employment is of a casual nature and otherwise than for the purpose of the employer's trade or business, or a domestic or menial servant, or a servant in husbandry, gardening or fruit growing, or in lumbering, or in driving, rafting or boom-

ing logs, or a person employed as a clerk in an office or in a wholesale or retail shop or store, or a person employed as a seaman or fisherman, where the personal injury caused to any such servant or person has been occasioned by, or has arisen from, or in the usual course of his work or employment as a domestic or menial servant, or as a servant in husbandry, gardening or fruit-growing, or in lumbering, or in driving, or in booming logs, or as a clerk in an office or wholesale or retail shop or store, or as a seaman or fisherman; but save as aforesaid, means any railway servant, ship laborer, long-shoreman, quarryman, miner, granite-worker, stone-cutter, pondman, and any person who, being a laborer, servant, journeyman, artificer, handy-craftsman, or otherwise engaged in manual labor whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract was made before or after the passing of this Act, and whether such contract is expressed or implied, oral or in writing, and is a contract of service, or a contract personally to execute any work or labor."

2. Sub-section 1 (a) of Section 5 of the Act, 8 Edward VII., Chapter 31, is hereby repealed, and the following enacted in lieu thereof:

"(a) If the workman leaves any dependents who, at the time of his death, reside in Canada, and are partially or wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, but not exceeding in any case two thousand dollars (\$2,000); provided, that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer."

3. The first clause of sub-section (2) of Section 5 of 8 Edward VII., Chapter 31, is hereby repealed and the following enacted in lieu thereof:

## New Brunswick

"(2) Where the total or partial incapacity for work results from the injury, a weekly payment during the incapacity, not to exceed seventy-five per cent of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer; such weekly payment not to exceed ten dollars (\$10); provided that,"

4. Sub-section (b) of sub-section (2) of Section 5 of the Act, 8 Edward VII., Chapter 31, is hereby repealed, and the following sub-section substituted in lieu thereof:

"(b) If the incapacity lasts for more than one hundred (100) weeks and is due to total blindness of both eyes, the loss of an arm, or leg, or both, the total disability of a limb, or the loss of a hand or foot, or both, compensation shall be payable in respect thereof, to not exceeding two hundred (200) weeks, and"

5. Section 7 of the Act 8 Edward VII., Chapter 31, is hereby repealed and the following substituted in lieu thereof:

"7. Section 7 of Chapter 146 of the Consolidated Statutes, 1903, is amended as follows: Strike out the words "twelve weeks and" in line five thereof, and substitute therefor the following; "two months, except in case where reasonable excuse is furnished for failure to give such notice within said time, and such notice is given as soon thereafter as possible, and unless"

6. Section 6 of the Act 1 George V., Chapter 43, is hereby amended by substituting "XXX" for "XXI" in the first line thereof.

7. The provisions of this Act shall not entitle a workman to any greater compensation in respect of personal injury caused to such workman before the coming into force of this Act than that which hitherto would have been payable in respect thereof.



## NOVA SCOTIA

(L. 1910, c. 3; as am'd in 1913)

AN ACT to Amend the Law with Respect to Compensation to Workmen for Accidental Injuries Suffered in the Course of their Employment.

(Passed the 22nd day of April, A. D. 1910)

Sec.

1. Short title.
2. Application and definition.
3. Employment under Crown.
4. Existing contracts.
5. Liability of employers to workmen for injuries.
6. Time for taking proceedings.
7. Contracting Act.

Sec.

8. Employés of certain companies excluded from operation of the Act.
9. Sub-contracting.
10. Bankruptcy of employer.
11. Remedies against stranger.
12. Act not applicable to certain occupations.
13. Commencement.

Be it enacted by the Governor, Council, and Assembly, as follows:—

Short title. 1. This Act may be cited as the “Nova Scotia Workmen’s Compensation Act.”

Application and definition. 2. (1) This Act shall apply only to employment by the undertakers as hereinafter defined, where not less than five workmen are employed on or in or about a railway, factory, mine, quarry or engineering work, or in loading or unloading a vessel, or on, in or about any building, either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water or other mechanical power is being used for the purpose of the construction, repair or demolition thereof.

(2) In this Act and the schedules hereto “railway” means any railway operated in the Province, and includes any street railway.

“Factory” has the same meaning as in the Nova Scotia Factories’ Act, and also includes any dock, wharf, quay and buildings thereon, machinery or plant, and every laundry worked by steam, water or mechanical power.

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Nova Scotia

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"Mine" means a mine to which the Coal Mines Regulation Act or the Metalliferous Mines Regulation Act applies.

"Engineering work" means any work of construction or alteration, or repair of a railroad, harbor, dock, canal or sewer, and includes any other work for the construction, improvement, alteration or repair of which machinery driven by steam, water or other mechanical power is used.

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry or laundry, means the person occupying and operating the same; in the case of a mine, means the owner thereof, within the meaning of the Coal Mines Regulation Act or the Metalliferous Mines Regulation Act, as the case may be; in the case of an engineering work, means the person undertaking the construction, alteration or repair; and in the case of a building, means the persons undertaking the construction, repair or demolition.

"Employer" includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer.

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labor or otherwise, but does not include any person whose remuneration exceeds twelve hundred dollars a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or an outworker, but, save as aforesaid, means any such person who has entered into or works under a contract of service or apprenticeship with an employer, in any employment to which this Act extends, whether by way of manual labor, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing; any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representatives or to his dependents or other person to whom or for whose benefit compensation is payable.

"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate

child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively.

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister.

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

**Employment under Crown.** 3. This Act shall not apply to persons in the naval or military services of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

**Existing contracts.** 4. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purpose of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

**Liability of employers to workmen for injuries.** 5. (1) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule of this Act.

(2) Provided that:—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed.

(b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing

## Nova Scotia

in this Act shall affect any civil liability of the employer; but in that case the workman may, at his option, either claim compensation under this Act or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment, both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid:

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct or drunkenness of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3) If any question arises in any proceeding under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which the Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule of this Act, be settled by arbitration in accordance with the second schedule of this Act.

(4) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so chooses, proceed to assess such compensation and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this sub-section, when the court assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5) Nothing in this Act shall affect any proceedings for a fine

under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

Time for  
taking pro-  
ceedings.

6. (1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof, and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice, shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defense by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

(2) Notice in respect of an injury under this Act, shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence, or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed

## Nova Scotia

to the employer at the office, or, if there be more than one office, any one of the offices of such body.

6a. No contract, agreement or release made or entered into by a workman in consequence of personal injury by accident arising out of and in the course of his employment shall be a bar or constitute any defense to any proceedings for the recovery under this chapter of compensation for the injury, unless the consideration for the said contract, agreement or release was, in the opinion of the committee, arbitrator, Judge or Court before whom any dispute or matter is brought, ample and adequate and was not on the part of the workman improvident, but was just and reasonable and not less favorable than if the workman had proceeded under the provisions of this Act and had not executed any contract, agreement or release, and the burden of proof in respect to such other compensation, and of same being ample and adequate, and that the contract, agreement or release was just and reasonable and was not improvident, shall in all cases rest upon the employer.

Contract or release by workman not a release unless consideration adequate. Onus on employer.

7. (1) If the Governor-in-council, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favorable to the general body of workmen and their dependents than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

Contracting out.

(2) The Governor-in-council may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modification such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obliga-

tion upon the workmen to join the scheme as a condition of their hiring.

(4) If complaint is made to the Governor-in-council by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favorable to the general body of workmen of such employer and their dependents as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Governor-in-council shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of the complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Governor-in-council in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such enquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Governor-in-council.

(7) The Governor-in-council shall make an annual report of the particulars of the proceedings of the Governor-in-council under this Act.

8. This Act shall not apply to the employés of the Dominion Coal Company, Limited, at any colliery where there is established a Miners' Relief Society under the provisions of Chapter 23, Revised Statutes 1900, nor to the employés of the Acadia Coal Company, Limited, at whose mines there is established a Miners' Relief Society under the provisions of said Chapter 23, Revised Statutes, 1900; nor to the employés of the Intercolonial Coal Mining Company, Limited, at whose mines there is established a Miners' Relief Society under the provisions aforesaid; nor to the employés of the Dominion Iron & Steel Company, Limited, so long as Chapter 201 of the Acts of 1906, is in operation; nor to the employés of the Nova Scotia Steel & Coal Company, Limited, so long as its Employés' Relief Fund is in operation; nor to the employés of the Sydney & Louisburg Railway Com-

Employés of certain companies excluded from operation by the Act.

## Nova Scotia

pany, Limited, so long as its Employés' Relief Fund Society is in operation; nor shall this Act apply to undertakers at whose mines there is established a Miners' Relief Society under the provisions of Chapter 23, Revised Statutes, 1900, (excepting however as aforesaid the Relief Societies established by the employés of the Dominion Coal Company, Limited, and to the employés of the Acadia Coal Company, Limited, to employés of the Nova Scotia Steel and Coal Company, Limited, and to employés of the Intercolonial Coal Mining Company, Limited) until the Governor-in-council orders that the provisions of this Act shall be applicable to said Societies or any of them, as to such employés or any of them, and the Governor-in-council may prescribe the terms and conditions upon which such order or orders shall come into effect.

9. (1) Where, in an employment to which the Act <sup>Sub-contract-</sup> applies, the undertakers contract with any person for <sup>ing.</sup>

the execution by or under such contractor of any work, and the undertakers would, if such work were executed by the workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

(2) Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

(3) This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

10. (1) Where any employer becomes liable under <sup>Bankruptcy</sup> this Act to pay compensation in respect of any acci- <sup>of employer.</sup> dent, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event



of the employer becoming bankrupt, or making a compromise or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into a chartered bank in the name of the clerk of such court, and order the same to be invested or applied in accordance with the provisions of the first schedule hereto with reference to the investment in the chartered bank of any sum allotted as compensation, and those provisions shall apply accordingly.

Remedies  
against  
stranger.

11. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

Act not applic-  
able to certain  
occupations.

12. Notwithstanding anything hereinbefore contained, this Act shall not apply to the employés engaged in agriculture, fishing, curing, packing, or the manufacture of fish or fish products, or shipbuilding, or employed in lumbering, or in saw mills.

Commence-  
ment.

13. This Act shall come into force on the first day of February, nineteen hundred and eleven.

## FIRST SCHEDULE

### SCALE AND CONDITIONS OF COMPENSATIONS

#### SCALE

(1) The amount of compensation under this Act shall be:—

(a) Where death results from the injury—

(i) If the workman leaves any dependents residing within Canada wholly dependent upon his earnings at the time of his death a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one thousand dollars whichever of

## Nova Scotia

those sums is the larger, but not exceeding in any case fifteen hundred dollars, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

(ii) If the workman does not leave any such dependents, but leaves any dependents in any part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or in default of agreement, may be determined on arbitration under this Act to be reasonable and proportionate to the injury to the said dependents; and

(iii) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding two hundred dollars.

(b) Where total or partial incapacity for work results from the injury, and such incapacity has continued for one week, a weekly payment during the incapacity, not exceeding fifty per cent of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payments not to exceed seven dollars; provided that the total amount paid as compensation for injury causing such total or partial incapacity shall not exceed the sum of fifteen hundred dollars, and that the minimum amount payable shall be five dollars. And provided also that as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than five dollars, the whole amount of such average weekly earnings shall be allowed as compensation.

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

(a) The average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated, provided that where, by reason of the shortness of the time during which the time has been spent in the employment of his employer, or, the casual nature of the employment or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade, employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(b) Employment by the same employer shall be taken to mean employment by the same employer in a grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness, or any other unavoidable cause.

(3) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect to his injury during the period of his incapacity.

(4) Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer; and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceedings under this Act in relation to compensation, shall be suspended until such examination takes place.

(5) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependents, or, if he leaves no dependents, to the person to whom the expenses are due; and if made to the legal personal representative, shall be paid by him to or for the benefit of the dependents or other person entitled thereto under this Act.

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Nova Scotia

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(6) Any question as to who is a dependent, or as to the amount payable to each dependent shall, in default of agreement, be settled by arbitration under this Act.

(7) The sum allotted as compensation to a dependent may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(8) Any sum which is agreed or is ordered by the committee or other arbitrator to be invested, may be invested, in whole or in part, in a chartered bank by the clerk of a county court in his name as clerk.

(9) Any sum to be so invested may be invested in the purchase of an annuity from the Dominion Government, or to be accepted by the Receiver-general of Canada as a deposit in the name of the clerk of the county court as such, and the provisions of any enactments or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such.

(10) No part of any money invested in the name of a clerk of a county court in a chartered bank under this Act shall be paid out except upon authority addressed to the Receiver-general of Canada or by the judge of the county court.

(11) Any person deriving any benefit from any moneys invested in a chartered bank under the provisions of this Act may, nevertheless, open an account in a Dominion Savings Bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(12) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to a medical referee, as mentioned in the second schedule to this Act. If the workman

refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(13) Any weekly payment may be reviewed at the request of either the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum and minimum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act; and in case of fatal accidents compensation shall cease to any dependent, as soon as in the opinion of the committee or arbitrator such dependent is capable of self support. Provided that where the workman was at the date of the accident under twenty-one years of age, and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman should probably have been earning at the date of the review if he had remained uninjured, but not in any case to exceed seven dollars.

(14) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(15) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

## SECOND SCHEDULE

### ARBITRATION

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration:—

(1) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party

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Nova Scotia

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before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects or there is no such committee, or the committee so refers the matter, or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by an arbitrator to be appointed by the county court judge.

(3) Any arbitrator appointed by the county court judge shall, for the purpose of this Act, have all the powers of a county court judge.

(4) The Arbitration Act shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law on such submission shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court, either party appeals to that court; and the arbitrator shall, for the purpose of any arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by writ in the county court.

(5) The Governor-in-council may make rules for the purpose of determining and regulating the procedure and practice under this Act and may amend such rules when deemed advisable; such rules and every amendment thereof shall be published forthwith in the Royal Gazette.

(6) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee or arbitrator. Such costs whether before a committee or arbitrator shall not exceed the limit prescribed by the rules made by the Governor-in-council and shall be taxed in the manner prescribed by those rules.

(7) In the case of the death, or refusal, or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(8) Where the amount of compensation under this Act has been ascertained, or any weekly payments varied, or any other

## Nova Scotia

matter decided under this Act, either by a committee or by an arbitrator, or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules, by the said committee or arbitrator, or by any party interested, to the clerk of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time upon the certificate of the arbitrator rectify such register.

(9) An arbitrator shall, under the rules made under this Act, have all the powers of a county court and the officers of every such court shall act accordingly, and rules may be made by the Governor-in-council, both for any purpose for which this Act authorizes rules to be made, and also generally for carrying into effect this Act, and proceedings before any arbitrator or in the county court.

(10) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court.

(11) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules made under this Act.

(12) Any committee or arbitrator may, subject to regulations made by the Governor-in-council, submit to a medical referee for report, any matter which seems material to any question arising in the arbitration or county court judge.

## QUEBEC

(L. 1909, c. 66)

AN ACT respecting the responsibility for accidents suffered by workmen in the course of their work, and the compensation for injuries resulting therefrom.

(Sanctioned May 29th 1909.)

*His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:*

### SECTION I

#### COMPENSATION

1. Accidents happening by reason of or in the course of their work, to workmen, apprentices and employés engaged in the work of building; or in factories, manufactories or workshops; or in stone, wood or coal yards; or in transportation business by land or by water or in loading or unloading; or in any gas or electrical business; or in any business having for its object the building, repairing, or maintenance of railways or tramways, waterworks, drains, sewers, dams, wharves, elevators, or bridges; or in mines, or quarries; or in any industrial enterprise, in which explosives are manufactured or prepared, or in which machinery is used, moved by power other than that of men or of animals, shall entitle the person injured or his representatives to compensation ascertained in accordance with the following provisions.

This act shall not apply to agricultural industries nor to navigation by means of sails.

2. In cases to which article 1 of this act applies, the person injured is entitled:

(a) In case of absolute and permanent incapacity, to a rent equal to fifty per cent of his yearly wages, reckoning from the day the accident took place, or from that upon which by agreement of the parties or by final judgment it is established that the incapacity has shown itself to be permanent;

(b) In case of permanent and partial incapacity, to a rent



equal to half the sum by which his wages have been reduced in consequence of the accident;

(c) For temporary incapacity to compensation equal to one-half the daily wages received at the time of the accident, if the inability to work has lasted more than seven days, and beginning on the eighth day.

The capital of the rents shall not, however, in any case except in the case mentioned in article 5, exceed two thousand dollars.

3. When the accident causes death, the compensation shall consist of a sum equal to four times the average yearly wages of the deceased at the time of the accident, and shall in no case, except in the case mentioned, in article 5, be less than one thousand dollars or more than two thousand dollars.

There shall further be paid a sum of not more than twenty-five dollars for medical and funeral expenses, unless the deceased was a member of an association bound to provide, and which does provide therefor;

The compensation shall be payable as follows:

(a) To the surviving consort not divorced nor separated from bed and board at the time of the death, provided the accident took place after the marriage.

(b) To the legitimate children or illegitimate children acknowledged before the accident, to assist them to provide for themselves until they reach the full age of sixteen years.

(c) To ascendants of whom the deceased was the only support at the time of the accident.

If the parties do not agree upon the apportionment of the compensation, it shall be apportioned by the proper court. Nevertheless every sum paid under article 2 of this act in respect of the same accident shall be deducted from the total compensation.

4. A foreign workman or his representatives shall not be entitled to the compensation provided by this act unless at the time of accident he or they reside in Canada, or if he or they cease to reside there while the rent is being paid: but if he or they cannot take advantage of this act the common law remedy shall exist in his or their favor.

5. No compensation shall be granted if the accident was brought about intentionally by the person injured.

The court may reduce the compensation if the accident was

## Quebec

due to the inexcusable fault of the workman, or increase it if it is due to the inexcusable fault of the employer.

6. If the yearly wages of the workman exceed six hundred dollars, no more than this sum shall be taken into account. The surplus up to one thousand dollars shall give a right only to one-fourth of the compensation aforesaid. This act does not apply in cases where the yearly wages exceed one thousand dollars.

7. Apprentices are assimilated to the workmen in the business who are paid the lowest wages.

8. The wages upon which the rent is based shall be, in the case of a workman engaged in the business during the twelve months next before the accident, the actual remuneration allowed him during such time, whether in money or in kind.

In the case of a workman employed less than twelve months before the accident, such wages shall be the actual remuneration which they have received since they were employed in the business, plus the average remuneration received by workmen of the same class during the time necessary to complete the twelve months.

If the work is not continuous the year's wages shall be calculated both according to the remuneration received while the work went on, and according to the workman's earnings during the rest of the year.

9. As soon as the permanent incapacity to work is ascertained, or, in case of death of the person injured, within one month from the date of the agreement between the employer and the parties interested, or, if there be no agreement, within one month from the date of the final judgment condemning him to pay the same, the employer shall pay the amount of the compensation to the person injured or his representatives, or, as the case may be, and, at the option of the person injured or of his representatives, shall pay the capital of the rent to an insurance company designated for that purpose by order in council.

10. The rents, payable under this act shall be paid quarterly.

The compensation in case of temporary incapacity is payable at the same time as the wages of the other employés, and at intervals in no case to exceed sixteen days.

11. The Lieutenant-governor-in-council may prescribe the conditions upon which the insurance companies applying by peti-

tion to be authorized to pay the said rents in virtue of this act, shall be authorized so to do; but no company that has not made a deposit with the Government of Canada or of this Province, in conformity with the laws of Canada or of this Province, of an amount deemed sufficient to ensure the performance of its obligations, shall be so authorized.

12. All compensation to which this act applies, shall be unalienable and exempt from seizure, but the employer may deduct from the amount of the indemnity any sum due to him by the workman.

13. The compensation prescribed by the preceding articles shall be entirely at the charge of the employer, and the employer shall not, for this purpose, deduct any part of the employé's wages, even with the consent of the latter.

## SECTION II

### LIABILITY FOR ACCIDENTS

14. The person injured or his representatives, shall continue to have, in addition to the recourse given, by this act, the right to claim compensation under the common law from the persons responsible for the accident other than the employer, his servants or agents.

The compensation so awarded to them shall, to the extent thereof, discharge the employer from his liability; and the action against third persons responsible for the accident, may be taken by the employer at his own risk, in place of the person injured or his representatives, if he or they refuse to take such action after having been put in default so to do.

15. The employer shall be liable to the person injured or to his representatives mentioned in article 3 of this act, for injuries resulting from accidents caused by or in the course of the work of such person, in the cases to which this act applies, only for the compensation prescribed by this act.

16. All moneys paid by any insurance company or mutual benefit society, shall be applied, to the extent thereof, on account of the sums and rents payable in virtue of this act, if the employer proves that he has assumed the assessments or premiums demanded therefor. But the employer's liability shall continue in

## Quebec

the company or society neglects to pay or becomes unable to pay the compensation for which it is liable.

17. Workmen who usually work alone shall not be subject to this act from the fact of their casually working with one or more other workmen.

18. The person injured shall be bound, if the employer requires him so to do, in writing, to submit to an examination by a practicing physician chosen and paid by the employer, and if he refuses to submit to such examination or opposes the same in any way, his right to compensation as well as any remedy to enforce the same shall be suspended until the examination takes place. The person injured shall, in such cases, always be entitled to demand that the examination shall take place in the presence of a physician chosen by him.

19. Every agreement contrary to the provisions of this act shall be absolutely null.

## SECTION III

## SECURITY

20. The claim of the person injured or of his representatives, for medical and funeral expenses, as well as for compensation allowed for temporary incapacity to work, shall be secured by privilege on the moveable and immoveable property of the employer, ranking concurrently with the claim mentioned in paragraph 9 of article 1994 of the Civil Code.

Payment of compensation for permanent incapacity to work, or in respect of an accident followed by death, shall so long as the compensation has not been paid, or so long as the sum necessary to procure the required rent has not been paid to an insurance company or otherwise paid in virtue of this act, be secured by a privilege upon moveable property of the same nature and rank, and by a privilege upon immoveable property ranking after other privileges, and after hypothecs.

## SECTION IV

## PROCEDURE

21. The Superior Court and the Circuit Court shall have jurisdiction of every action or contestation in virtue of this act,

## Quebec

in accordance with the jurisdiction given to them respectively by the Code of Civil Procedure.

22. Review and appeal of or from judgments susceptible thereof shall be taken within fifteen days from the rendering of such judgments, and if not so taken the right thereto shall lapse. Such appeals shall have precedence.

23. The court or judge may, upon petition, at any stage of the case, whether before judgment or while an appeal is pending, grant a provisional daily allowance to the person injured or to his representatives.

24. There shall be no trial by jury in any action taken in virtue of this act, but the proceedings shall be summary, and shall be subject to the provisions of the Code of Civil Procedure respecting such matters.

25. The action to recover any compensation to which this act applies shall, as against all persons, be subject to a prescription of one year.

26. A demand to revise the amount of the compensation, based on the alleged aggravation or diminution of the disability of the person injured may be taken during the four years next after the date of the agreement of the parties as to such compensation, or next after that of the final judgment. Such demand shall be in the form of an action at law.

27. Before having recourse to the provisions of this act, the workman must be authorized thereto by a judge of the Superior Court upon petition served upon the employer. The judge shall grant such petition without the hearing of evidence nor the taking of affidavits but may before granting the same use such means as he may think useful to bring about an understanding between the parties. If they agree, he may render judgment in accordance with such agreement upon the petition, and such judgment shall have the same effect as a final judgment of a competent court.

28. This act shall come into force on the first day of January, 1910, and shall not apply to pending cases nor to accidents which have happened before it came into force.

Loi concernant les responsabilités des accidents dont les ouvriers sont victimes dans leur travail, et la réparation des dommages qui en résultent.  
(Sanctionnée le 29 mai 1909)

## Quebec

Sa Majeste, de l'avis et du consentement du Conseil législatif et de l'Assemblée législative de Québec, décrète ce qui suit:

## SECTION I

## DES INDEMNITÉS

1. Les accidents survenus par le fait du travail, ou à l'occasion du travail, aux ouvriers, apprentis et employés occupés dans l'industrie du bâtiment, dans les usines, manufactures et ateliers, et dans les chantiers de pierre, de bois ou de charbon; dans les entreprises de transport par terre ou par eau, de chargement ou de déchargement, dans celles de gaz ou d'électricité, de construction, de réparation ou d'entretien de chemins de fer ou tramways, d'aqueducs, d'égouts, de canaux, de digues, de quais, de docks, d'élévateurs et de ponts; dans les mines, minières, carrières, et, en outre, dans toute exploitation industrielle, dans laquelle sont fabriquées ou mises en oeuvre des matières explosives, ou dans laquelle il est fait usage d'une machine mue par une force autre que celle de l'homme ou des animaux, donnent droit, au profit de la victime ou de ses représentants, à une indemnité réglée conformément aux dispositions ci-après.

La présente loi ne s'applique pas à l'industrie agricole ni à la navigation à voile.

2. Dans les cas prévus par l'article 1 de la présente loi, la victime a droit:

(a) Pour l'incapacité absolue et permanente, à une rente égale à cinquante pour cent de son salaire annuel, à compter du jour de l'accident ou de celui où, soit par l'accord des parties, soit par le jugement définitif, il est constaté que l'incapacité présente le caractère de la permanence;

(b) Pour l'incapacité partielle et permanente, à une rente égale à la moitié de la réduction que l'accident fait subir au salaire;

(c) Pour l'incapacité temporaire, à une indemnité égale à la moitié du salaire journalier touché au moment de l'accident, si l'incapacité de travail a duré plus de sept jours et à partir du huitième jour.

Le capital des rentes ne doit cependant, dans aucun cas, sauf celui mentionné à l'article 5, excéder deux mille piastres.

3. Lorsque l'accident a causé la mort, l'indemnité comprend

## Quebec

une somme égale à quatre fois le salaire moyen annuel du défunt au moment de l'accident, ne devant, dans aucun cas, sauf le cas mentionné à l'article 5, être moindre que mille piastres ni excéder deux mille piastres.

Il est en outre payé une somme n'excédant pas vingt-cinq piastres pour les frais de médecin et de funérailles, à moins que la victime ne soit membre d'une association tenue d'y pourvoir et qui y pourvoit.

L'indemnité est payable de la manière suivante:

(a) Au conjoint survivant, non divorcé ni séparé de corps, au moment du décès, pourvu que l'accident ait eu lieu après le mariage;

(b) Aux enfants légitimes ou naturels, reconnus avant l'accident, de manière à aider à pourvoir à leurs besoins jusqu'à l'âge de seize ans révolus;

(c) Aux ascendants dont le défunt était l'unique soutien au moment de l'accident.

A défaut d'accord entre les parties au sujet de la répartition de l'indemnité, elle est faite par le tribunal compétent.

Cependant toute somme payée en vertu de l'article 2 de la présente loi pour le même accident sera déduite de l'indemnité totale.

4. Un ouvrier étranger ou ses représentants n'ont droit aux sommes et indemnités prévues par la présente loi que si, au moment de l'accident, ils résident au Canada et continuent à y résider pendant le service de la rente. Mais s'ils ne peuvent se prévaloir de la présente loi, le recours de droit commun existe en leur faveur.

5. Aucune indemnité n'est accordée dans le cas où l'accident a été intentionnellement provoqué par la victime.

Le tribunal peut diminuer l'indemnité si l'accident est du à la faute inexcusable de l'ouvrier, ou l'augmenter s'il est dû à la faute inexcusable du patron.

6. Si le salaire annuel de l'ouvrier dépasse six cents piastres, il n'est pris en considération que jusqu'à concurrence de ce montant. Pour le surplus, et jusqu'à mille piastres, il ne donne droit qu'au quart des indemnités susdites. Dans le cas d'un salaire annuel d'au delà de mille piastres la présente loi de s'applique pas.

## Quebec

7. Les apprentis sont assimilés aux ouvriers les moins rétribués de l'entreprise.

8. Le salaire servant de bases à la fixation des rentes s'entend, pour l'ouvrier occupé dans l'entreprise pendant les douze mois écoulés avant l'accident, de la rémunération effective qui lui a été allouée pendant ce temps, soit en argent, soit en nature.

Pour les ouvriers occupés pendant moins de douze mois avant l'accident, il doit s'entendre de la rémunération effective qu'ils ont reçue depuis leur entrée dans l'entreprise, augmentée de la rémunération moyenne qu'ont reçue, pendant la période nécessaire pour compléter les douze mois, les ouvriers de la même catégorie.

Si le travail n'est pas continu, le salaire annuel est calculé tant d'après la rémunération reçue pendant la période d'activité que d'après le gain de l'ouvrier pendant le reste de l'année.

9. Dès que la permanence de l'incapacité du travail est constatée, ou, en cas de mort de la victime, dans le mois de l'accord entre le chef de l'entreprise et les intéressés, et, à défaut d'accord, dans le mois du jugement définitif qui le condamne, le chef d'entreprise doit payer, suivant le cas au choix de la victime ou de ses représentants, le montant de l'indemnité à la victime ou à ses représentants, ou le capital des rentes à une compagnie d'assurance agréé à cette fin par arrêté du lieutenant-gouverneur en conseil.

10. Les rentes créés en vertu de la présente loi sont payables par trimestre.

Les indemnités pour le cas d'incapacité temporaire sont payables aux mêmes époques que les salaires des autres employés, ne devant, en aucun cas, excéder seize jours.

11. Le lieutenant-gouverneur en conseil détermine les conditions de l'agrégation des compagnies d'assurance qui demandent, par requête, à être autorisées à assumer le service des rentes conformément à la présente loi; mais aucune compagnie qui n'a pas fait un dépôt entre les mains du gouvernement fédéral ou du gouvernement provincial, conformément à une loi du Canada ou de la province, d'un montant estimé suffisant pour assurer l'exécution de ses obligations, ne peut être ainsi autorisée.

12. Toutes les indemnités prévues par la présente loi sont incessibles et insaisissables, mais le chef d'industrie pourra retenir sur le montant de l'indemnité toute somme à lui due par l'ouvrier.



13. Les indemnités déterminées aux articles qui précèdent sont à la charge exclusif du chef de l'entreprise, lequel ne peut faire aucune retenue sur les salaires, de ce chef, même avec le consentement du salarié.

## SECTION II

### DE LA RESPONSABILITÉ

14. Indépendamment de l'action résultant de la présente loi, la victime ou ses représentants conservent, contre les auteurs de l'accident, autre que le patron ou ses ouvriers et préposés, le droit de réclamer la réparation du préjudice causé, conformément aux règles du droit commun.

L'indemnité qui leur est accordée exonère à due concurrence le chef de l'entreprise des obligations mises à sa charge. Cette action contre les tiers responsables peut même être exercée par le chef d'entreprise, à ses risques et périls, aux lieu et place de la victime ou de ses ayants droit, si ceux-ci négligent d'en faire usage après mise en demeure.

15. Les dommages résultant des accidents survenant par le fait du travail ou à l'occasion du travail dans les cas prévus la présente loi, ne donnent lieu, à charge du chef d'entreprise, au profit de la victime ou de ses ayants droit, tels que définis à l'article 3 de la présente loi, qu'aux seules réparations déterminées par cette loi.

16. Tous montants payés par une compagnie d'assurance ou une société de secours mutuels, sont imputés en déduction des sommes et rentes payables en vertu de la présente loi, jusqu'à due concurrence; si le patron justifie qu'il avait pris à sa charge les cotisations ou primes exigées pour cet objet. Mais l'obligation du patron continue si la compagnie ou société néglige ou devient incapable de servir l'indemnité à laquelle elle est tenue.

17. Les ouvriers qui travaillent seuls d'ordinaire ne peuvent être assujettis à la présente loi par le fait de la collaboration accidentelle d'un ou de plusieurs autres ouvriers.

18. La victime est tenue, si le chef d'entreprise l'exige par écrit, de subir un examen fait par un médecin partiquant, choisi et payé par le chef d'entreprise, et, si elle refuse de se soumettre à cet examen ou s'y oppose en aucune façon, son droit à l'indem-

## Quebec

nité, ainsi que tout recours pour le mettre à cet effect, reste suspendu jusqu'à ce que l'examen ait lieu.

La victime, dans ce cas, aura toujours le droit d'exiger que l'examen soit fait en présence d'un médecin de son choix.

19. Toute convention contraire aux dispositions de la présente loi est nulle de plein droit.

## SECTION III

## DE LA GARANTIE

20. La créance de la victime de l'accident ou de ses ayants droit relative aux frais de médecin et aux frais funéraires, ainsi qu'aux indemnités allouées à la suite de l'incapacité temporaire de travail, est garantie par un privilège sur les biens meubles et immeubles du chef d'entreprise prenant rang concurremment avec la créance mentionnée au paragraphe 9 de l'article 1994 du Code Civil.

Le paiement de l'indemnité pour incapacité permanente de travail, ou accident suivi de mort, est garanti, tant que l'indemnité n'a pas été payée ou que la somme requise pour constituer la rente exigible n'a pas été versée à une compagnie d'assurance ou autrement payée en vertu de cette loi, par un privilège de même nature et de même rang sur les meubles et prenant rang sur les immeubles après les autres privilèges et hypothèques.

## SECTION IV

## DE LA PROCÉDURE

21. La Cour supérieure et la Cour de circuit connaissent de toute demande et de toute contestation résultant de la présente loi, conformément à la juridiction qui leur est attribuée respectivement par le Code de procédure civile.

22. L'appel et la révision des jugements qui en sont susceptibles doivent être interjetés dans les quinze jours de la date de leur reddition, à peine de déchéance. Ces appels ont préséance sur les autres.

23. Le tribunal ou le juge peut, à toute phase de la procédure, avant jugement, ou pendant l'instance en appel, accorder, sur

requête, une provision à la victime ou à ses ayants cause sous forme d'allocation journalière.

24. Le procès par jury est aboli dans toute cause en vertu de la présente loi; mais les procédures sont sommaires et soumises aux dispositions du Code de procédure civile relatives à ces matières.

25. L'action en recouvrement des indemnités prévues par cette loi, se prescrit contre toutes personnes par un an.

26. Une demande en revision des indemnités, fondée sur une aggravation ou une atténuation de l'infirmité de la victime, est ouverte pendant quatre années à dater de l'accord survenu entre les parties, ou du jugement définitif. Cette demande est faite par action.

27. Avant d'avoir recours aux dispositions de la présente loi, l'ouvrier doit y être autorisé par un juge de la Cour supérieure, sur requête signifiée au patron. Le juge, sans enquête ni affidavit, doit accorder cette requête, mais peut auparavant employer tels moyens qu'il croit utiles pour amener une entente entre les parties. Si elles s'accordent, il peut rendre jugement conformément à cette entente, sur la requête même et ce jugement a le même effet qu'un jugement final de la cour de juridiction compétente.

28. La présente loi entrera en vigueur le premier janvier 1910, et ne s'appliquera ni aux causes pendantes ni aux accidents arrivés avant sa mise en vigueur.

## SASKATCHEWAN

(L. 1910-11, c. 9; as am'd L. 1912-13, c. 46)

AN ACT respecting Compensation to Workmen for Injuries suffered in the Course of their Employment.

[Assented to March 23, 1911.]

*His Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows:*

### SHORT TITLE

1. This Act may be cited as "*The Workmen's Compensation Act.*" Short title.

### APPLICATION OF ACT

2. This Act shall apply only to employment by the principal on or in or about a railway, factory, mine, quarry or engineering work; or in or about any building which is either being constructed or repaired or being demolished. Application of Act.

### INTERPRETATION

3. In this Act unless the context otherwise requires the expression: Interpretation.

1. "Railway" means a road used by a private person or public company on which carriages run over metal rails and shall include railways or tramways worked by the force and power of steam, electricity or of the atmosphere or by mechanical power or any combination of them; "Railway."

2. "Factory" means a building, workshop or place where machinery driven by steam, water or other mechanical power is used and includes mills where manufactures of wood, flour, meal, pulp or other substances are being carried on, also smelters where metals are sorted, extracted or operated on; every laundry worked by steam, water or other mechanical power and also includes any dock, wharf, quay, ware- "Factory."

## Saskatchewan

- house, shipbuilding yard where goods or materials are being stored, handled, transported or manufactured;
- "Mine." 3. "Mine" means any kind of mine and includes every shaft in the course of being sunk and every level and inclined plane in the course of being driven for commencing or opening any mine or for searching for or proving minerals and all the shafts, levels, planes, works, machinery, tramways, railways and sidings, both below ground and above ground, in and adjacent to a mine and any such shaft, level and inclined plane of and belonging to the mine;
- "Engineering work." 4. "Engineering work" means any work of construction or alteration or repair of a railway, harbour, dock, canal, sewer or system of waterworks; and includes any other work for the construction, alteration or repair of which machinery driven by steam, water or other mechanical power is used;
- "Quarry." 5. "Quarry" means an open cut from which rock is cut or taken;
- "Principal." 6. "Principal" in the case of a railway means the person or company owning or operating the railway; in the case of a factory, mine or quarry means the owner, occupier or operator thereof; in the case of an engineering work or other work specified in this Act means the person undertaking the construction, alteration, repair or demolition.
- "Employer." 7. "Employer" includes any body of persons corporate or unincorporate, any municipality and the legal personal representative of a deceased employer and where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship the latter shall for the purposes of this Act be deemed to be the employer of the workman whilst he is working for that other person;
- "Court" or "district court." 8. "Court" or "district court" means the district court of the judicial district in which the defendant resides or in which the accident out of which the matter arose occurred or any judge of such district court;

## Saskatchewan

9. "Workman" means every person who is engaged in any employment to which this Act applies whether by way of manual labor or otherwise and whether his agreement is one of service or apprenticeship or otherwise and is expressed or implied, is oral or in writing; but does not include any person employed otherwise than by way of manual labor whose remuneration exceeds \$1,200 a year; "Workman."

10. "Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death or would but for the incapacity due to the accident have been so dependent and where the workman being the parent or grandparent of an illegitimate child leaves such a child so dependent upon his earnings or being an illegitimate child leaves a parent or grandparent so dependent upon his earnings shall include such an illegitimate child and parent or grandparent respectively; "Dependents."

11. "Member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, adopted child, foster parent. "Member of a family."

4. If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman his employer shall be liable to pay compensation in accordance with the provisions of this Act: Liability of employers to workman for injuries.

Provided that the employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning wages at the work at which he was employed.

(2) Any contract made after the coming into force of this Act whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment shall for the purposes of this Act be void and of no effect; and any such contract existing at the coming

## Saskatchewan

into force of this Act shall not for the purposes of this Act be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the time of the coming into force of this Act.

Compensation recoverable by action in district court.

5. Such compensation may be recovered by action in the district court.

Negligence of fellow workmen.

6. Such employer shall be liable to pay such compensation whether or not:

Negligence arising from defect in ways, works, machinery, etc.

(a) The injury or death resulted from the negligence of any person engaged in a common employment with the injured employé; or

(b) The injury or death was caused by the negligence of the employer or of any person in his service or by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, building or premises connected with, intended for or used in the business of the employer; or

Contributory negligence of employé.

(c) The workman contributed to or was the sole cause of the injury or death by reason of his own negligence or misconduct; or

Risk incidental to employment assumed by workman.

(d) The injury or death resulted from a risk arising out of or incidental to the nature of the employment and which the workman expressly or impliedly assumed.

In case of death action to be brought by executor or administrator.

7. If such injury results in death the action shall be brought by and in the name of the executor or administrator of the deceased workman and shall be for the benefit of the dependents of the deceased.

Where action brought independently of this Act, procedure.

8. If within the time limited for bringing an action under this Act an action is brought to recover damages independently of this Act for injury caused by an accident and it is determined in such action that the injury is one for which the employer is not liable in such action but that he would have been liable to pay compensation under this Act the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so chooses, proceed to assess such

## Saskatchewan

compensation and to adjudge the same to the plaintiff and shall be at liberty to deduct from such compensation all or part of the costs which in its judgment have been caused by the plaintiff bringing his action independently of this Act instead of proceeding under the same.

9. Where in any employment to which this Act applies the principal contracts with any person (in this section called "the contractor") for the execution by or under such contractor of any work in the way of the principal's trade or business the principal shall be liable to pay any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him: Subcontracting.

Provided that the principal shall be entitled to be indemnified by any other person who would have been liable independently of this section.

(2) This section shall not apply to any contract with any person for the execution by or under such person of any work which is merely ancillary or incidental to and is no part of or process in the trade or business carried on by such principal.

(3) Nothing in this Act shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

## PROVISION AS TO CASES OF INSOLVENCY OF EMPLOYER

10. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workmen then in the event of the employer making an assignment for the benefit of or a composition or arrangement with his creditors or if the employer is a company in the event of the company having commenced to be wound up the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman and upon any such transfer the insurers shall have the same rights and remedies and be subject to Provisions as to cases of insolvency of employer.



the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employers to the workman the workman may prove for the balance in the assignment or liquidation proceedings.

(3) There shall be included among the debts which under *The Assignments Act* or *The Companies Winding up Act* are in the distribution of the property in the case of an assignment or in the distribution of the assets of a company being wound up under the said Acts respectively to be paid in priority to all other debts, the amount not exceeding in any individual case five hundred dollars due in respect of any compensation the liability wherefor accrued before the date of the assignment or the date of the commencement of the winding up and the said Acts shall have effect accordingly.

(4) The provisions of this section with respect to preferences and priorities shall not apply where the assignor or the company being wound up has entered into such a contract with insurers as aforesaid.

(5) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Limitation  
of right of  
action.

11. An action under this Act shall not be maintainable unless it is commenced within six months from the occurrence of the accident causing the injury or in case of death within six months from the time of death.

Alternate  
remedies.

12. In the case of any injury for which compensation is payable under this Act the plaintiff may at his option proceed either under this Act against the employer or independently of this Act against the said employer or any other person from whom he may be entitled at law to recover damages; but the

## Saskatchewan

plaintiff shall not be at liberty to proceed both under and independently of this Act.

13. Where compensation is paid under this Act by an employer for an injury caused under circumstances creating a legal liability in some person other than the employer the employer shall be entitled to be indemnified by the said other person.

Remedies  
against both  
employer  
and stranger.

14. Notwithstanding anything hereinbefore contained this Act shall not apply to the employment of agriculture nor to any work performed or machinery used on or about a farm or homestead for farm purposes or for the purposes of improving such farm or homestead and for greater certainty but so as not to restrict in any degree the generality of the foregoing words of this section this Act shall not apply to any of the following employments on a farm:

Application  
of Act  
restricted.

(a) Threshing, cleaning, crushing, grinding or otherwise treating grain or sawing wood, posts, lumber or other wooden material or otherwise treating the same or the pressing of hay by any kind of machinery or motive power and whether such machinery or motive power be portable or stationary and whether the same be owned and operated by the farmer or farmers for whose purpose the same is being used or by any other farmer or other person for gain, profit or reward;

(b) The construction, repair or demolition of any farm building, windmill, derrick or other structure.

(2) The word "factory" as defined in this Act shall not be held to include any building, workshop, place or mill on a farm used for the purposes of such farm.

(3) The words "mine" or "quarry" as defined in this Act shall not be held to include any mine or quarry on a farm used for the purposes only of such farm.

(4) The words "engineering work" as defined in this Act shall not be held to include any ditch, drain, well or other excavation on a farm being constructed or repaired for the purposes of such farm or any adjoining farm or farms.

## Saskatchewan

(5) Notwithstanding anything contained in this section any person undertaking the construction, repair or demolition of any building upon any farm under contract with the owner or occupant of such farm shall be liable to the workmen employed by him for the compensation for injuries provided by this Act.

Amount of compensation.

15. The amount of compensation recoverable under this Act shall not exceed either such sum as is found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those three years in a like employment or the sum of \$1,800 whichever is larger but shall not exceed in any case the sum of \$2,000.

Compensation not subject to deduction.

16. The amount of compensation recoverable under this Act shall not be subject to any deduction or abatement by reason or on account or in respect of any matter or thing whatsoever save in respect of any sums of money which shall have been paid by the employer to the workman on account of the injury received by the workman, which sum or sums shall be deducted from the amount of the said compensation.

Compensation not to be charged, etc.

17. The amount of compensation recoverable under this Act shall not be capable of being assigned, charged or attached and shall not pass to any other person by operation of law nor shall any claim be set off against the same.

Distribution of compensation in case of death.

18. Where the action is brought on behalf of the dependents of a workman for an injury resulting in death the amount of the compensation awarded after deducting costs shall be divided among the said dependents in such shares as the court may determine.

Actions to be tried by judge without a jury.

19. All actions brought under this Act shall be tried by the judge without jury; an appeal may with the consent of the judge be taken to the supreme court sitting *en banc* upon any question of law or mixed question of law and fact; but save as provided in this section no appeal shall lie from any judgment or order of the trial judge.

Commencement.

20. This Act shall come into force on the first day of November, 1911.

## Saskatchewan

21. From and after the first day of January, 1913, it shall be the duty of every employer forthwith after the happening of any accident whereby any workman in his employ has become wholly or partially incapacitated from work to report such accident to the secretary of the bureau of labor at Regina, together with all the details of the injury caused thereby as the same are set out in form A of the schedule to this Act, and unless such employer shall have complied with the requirements of this section within ten days after the happening of such accident he shall be deemed guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding \$300 and costs, and to a further penalty not exceeding \$10 and costs for each day subsequent to the expiration of the said interval during which he neglects to make such report and in default of payment to imprisonment for a term not more than three months.

(2) No report required by this section to be made nor any part thereof shall be admitted in evidence or referred to at the trial of any action or in any judicial proceeding whatever except prosecution for the violation of this Act.

## FORM A

## PART I

1. Employer, place and time
  - (a) Employer's name
  - (b) Office address; street and No.  
City or village
  - (c) Nature of business
  - (d) Location of plant or place of work where accident occurred, if not at office address
  - (e) Date on which accident occurred
  - (f) Day of week
  - (g) Hour of day
2. Injured person:
  - (a) Name  
Address
  - (b) Sex
  - (c) Age
  - (d) Speak English. If not, what language?

## Saskatchewan

- (e) Occupation when injured
- (f) Length of experience
- (g) Piece or time worker
- (h) Wages or average earnings per day
- (i) Working days per week
- 3. Cause:
  - (a) Name of machine, tool or appliance in connection with which accident happened
  - (b) Describe in full how accident happened
- 4. Nature and extent of injury:
  - (a) State exactly what part of person injured and nature of injury
  - (b) Has injured person returned to work?  
If so, on what date?
  - (c) Is injured person still incapacitated from work?
  - (d) Attending physician or hospital where sent  
Date report made out by

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 PART II

This part to be filled out and sent in with Part I if extent of injury and disability are then fully known, otherwise detach Part II after filling names for identification and fill out and send it in after two weeks.

Name of employer

Name of injured person

- 5. Extent of injury:
  - (a) Did injury result in death?
  - (b) Has it caused any permanent physical injury?
- 6. Amount of disability:
  - (a) Has injured person returned to work?  
If so, on what date?  
At what occupation?  
And wages per day?
  - (b) If injured person has not yet returned to work state probable length of disability on account of accident  
Date of report made out by

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## CHAPTER XXVI

### BRITISH WORKMEN'S COMPENSATION AND NATIONAL INSURANCE ACTS

	Page
WORKMEN'S COMPENSATION ACT.....	1735
NATIONAL INSURANCE ACT.....	1763

#### BRITISH WORKMEN'S COMPENSATION ACT

(6 Edw. VII, c. 58)

An act to consolidate and amend the law with respect to Compensation to Workmen for Injuries suffered in the course of their Employment (21st, December, 1906).

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

#### I

(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

(2) Provided that

(a) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.

(b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act, except in case of such personal negligence or wilful act as aforesaid:

## Compensation Act of 1906

(c) It if is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the person injured is a workman to whom this act applies), or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration, in accordance with the second schedule to this act.

(4) If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act. In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act.

(5) Nothing in this act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

## II

(1) Proceedings for the recovery under this act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

(a) The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defense by the want,

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Compensation Act of 1906

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defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(b) The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

### III

(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workman, certifies that any scheme of compensation, benefit, or insurance for the workman of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favor of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this act shall apply notwithstanding any contract to the contrary made after the commencement of this act.

(2) The registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.



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Compensation Act of 1906

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(3) No scheme shall be certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the registrar under this act.

(8) The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

## IV

(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for the references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, plowing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he

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Compensation Act of 1906

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alone shall be liable under this act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

## V

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workmen, and upon any such transfers the insurer shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the

## Compensation Act of 1906

lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependents of a miner, shall have a like priority as is conferred on wages of miners by section nine of that act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

## VI

Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this act relating to subcontracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this act.

## VII

(1) This act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea fishing service, provided that such persons are workmen within the meaning of this act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—

(a) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master

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Compensation Act of 1906

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of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident;

(b) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant;

(c) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession, or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly;

(d) In the case of the death of a master, seaman, or apprentice, leaving no dependents, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial;

(e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice;

(f) Any sum payable by way of compensation by the owner of a ship under this act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury;

(g) Subsections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependents of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen

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Compensation Act of 1906

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months of the date at which the ship is deemed to have been lost with all hands;

(2) This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(3) This section shall extend to pilots to whom Part X of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

## VIII

## (1) Where—

(1) The certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the third schedule to this act and is thereby disabled from earning full wages at the work at which he was employed; or

(2) A workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(3) The death of a workman is caused by any such disease and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependents shall be entitled to compensation under this act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:

(a) The disablement or suspension shall be treated as the happening of the accident;

(b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable;

(c) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due;

Provided that—

(i) The workman or his dependents if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that

Compensation Act of 1906

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employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and

(ii) If that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

(iii) If the disease is of such a nature as to be contracted by a gradual process, any other employers, who during the said twelve months employed the workman in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this act for settling the amount of the compensation;

(d) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable;

(e) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

(f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule to this act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be

## Compensation Act of 1906

such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given. Provided that—

(a) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine;

(b) Where a workman dies without having obtained a certificate of disablement or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modification as may be contained in the order.

(7) Where, after inquiry held on the application of any employers or workman engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by provisional order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

(8) A provisional order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the bill confirming any such order is pending in either House of Parliament, a petition is presented against the order, the bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills, and any act confirming any provisional order under this section may be repealed, altered, or amended by a provisional order made and confirmed in like manner.

(9) Any expenses incurred by the Secretary of State in respect of any

## Compensation Act of 1906

such order, provisional order, or confirming bill shall be defrayed out of moneys provided by Parliament.

(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this act.

## IX

(1) This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the royal household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The treasury may, by warrant laid before Parliament, modify for the purposes of this act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this act.

## X

(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this act as he may, with the sanction of the treasury, determine, and remuneration of, and other expenses incurred by, medical referees under this act shall, subject to regulations made by the treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of the county courts under the second schedule to this act shall be paid out of moneys provided by Parliament in accordance with regulations made by the treasury.

## XI

(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon



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Compensation Act of 1906

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its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge, requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made the defendant and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this act as it applies to the detention of a ship under that act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

## XII

(1) Every employer in any industry to which the Secretary of State may direct that this section shall apply shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(2) Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

## XIII

In this act, unless the context otherwise requires, "Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with

## Compensation Act of 1906

whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

"Workman" does not include any person employed otherwise than by way of manual labor whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an out-worker, or a member of the employer's family dwelling in his house, but save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labor, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other persons to whom or for whose benefit compensation is payable;

"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister;

"Ship," "vessel," "seamen," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act 1890, applies, The City of London Police Force, The Royal Irish Constabulary, and The Dublin Metropolitan Police Force;

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

The exercise and performance of the powers and duties of a local or

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Compensation Act of 1906

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other public authority shall, for the purposes of this act, be treated as the trade or business of the authority;

"County Court," "Judge of the county court," "registrar of the county court," "plaintiffs," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

## XIV

In Scotland, where a workman raises an action against his employer independently of this act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that act, not be removed under that act or otherwise to the Court of Session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the second schedule to this act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this act shall apply.

## XV

(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that act) existing at the commencement of this act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this act.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this act.

(3) The registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this act as to schemes.

(4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this act, the certificate thereof shall be revoked.

## XVI

(1) This act shall come into operation on the first day of July nineteen hundred and seven, but, except so far as it relates to references to medical

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Compensation Act of 1906

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referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this act.

(2) The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this act, except to the extent to which this act applies to those cases.

## XVII

This act may be cited as the Workmen's Compensation Act, 1906.

## SCHEDULES

## FIRST SCHEDULE

SECTION 1. *Scale and Conditions of Compensation*

(1) The amount of compensation under this Act shall be

(a) where death results from the injury—

(i.) if the workman leaves any dependents wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve

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Compensation Act of 1906

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months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound:

Provided that—

- (a) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and
  - (b) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.
- (2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—
- (a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;
  - (b) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;
  - (c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;
  - (d) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

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Compensation Act of 1906

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(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to learn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this Act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and

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Compensation Act of 1906

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partial dependants nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the

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Compensation Act of 1906

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Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date



## Compensation Act of 1906

of the review if he had remained uninjured, but not in any case exceeding one pound.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(20) Where under this Schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

(21) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(22) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

## Compensation Act of 1906

## SECOND SCHEDULE

SECTION 1. *Arbitration, Etc.*

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so authorizes, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this Act, have all the powers of that judge.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbi-

## Compensation Act of 1906

trator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules, and such taxation may be reviewed by the judge of the county court.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

- (a) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and
- (b) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and
- (c) the judge of the county court may at any time rectify the register; and
- (d) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and
- (e) The judge may, within six months after a memorandum of an

## Compensation Act of 1906

agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default of his part.

(11) Where any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

(12) The duty of a judge of county courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or be for any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(13) No court fee, except such as may be prescribed under paragraph (15) of the First Schedule to this Act, shall be payable by, any party in respect of any proceedings by or against a workman under this Act in the court prior to the award,

## Compensation Act of 1906

(14) Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(16) The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisions (d) and (e) of paragraph (9) of this Schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

(17) In the application of this Schedule to Scotland—

(a) "County court judgment" as used in paragraph (9) of this Schedule means a recorded decree arbitral:

(b) Any Application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorized in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the

## Compensation Act of 1906

same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords:

(c) Paragraphs (3), (4), and (8) shall not apply.

(18) In the application of this Schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the Court of Appeal to the House of Lords.

## THIRD SCHEDULE

## SECTION 8

<i>Description of Disease</i>	<i>Description of Process</i>
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparation or compounds.
Ankylostomiasis.	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this Schedule to that industry, the expression "process" shall, unless the Secretary of State otherwise directs, include only the process so specified.

For additional diseases brought under the Act by orders of the Secretary of State, see Appendix Q.

## APPENDIX Q

## WORKMEN'S COMPENSATION ACT, 1906

## INDUSTRIAL DISEASES

ORDER of the Secretary of State, Dated May 22nd, 1907, Extending the Provisions of the Workmen's Compensation Act, 1906, to Certain Industrial Diseases, as Amended by Order of 2nd December, 1908.

Whereas, by section 8 of the Workmen's Compensation Act, 1906, the provisions of that Act are applied, in certain cases and subject to certain modifications, to workmen disabled by, or suspended from their usual employment on account of their having contracted, a disease mentioned in the Third Schedule to the Act;

And whereas it is enacted by sub-section (2) of the said section that if the workman at or immediately before the date of his disablement or suspension was employed in a process mentioned in the second column of the Third Schedule to the Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, then the disease shall be deemed, except as otherwise provided in the sub-section, to have been due to the nature of that employment unless the employer proves the contrary;

And whereas sub-section (6) of the same section empowers the Secretary of State to make Orders for extending the provisions of that section to other diseases and other processes, and to injuries due to the nature of any employment specified in the Order not being injuries by accident, either without modification or subject to such modifications as may be contained in the Order;

Now I, the Right Honourable Herbert John Gladstone, one of his Majesty's Principal Secretaries of State, by this Order made under sub-section (6) of the said section, do hereby direct that the provisions of section 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the diseases, injuries, and processes, specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases and injuries were included in the first column of the Third Schedule to the Act and as if the said processes were set opposite in the second column of that Schedule to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

H. J. GLADSTONE,

One of His Majesty's Principal  
Secretaries of State.

Whitehall,

May 22nd, 1907.

## Compensation Act of 1906

## SCHEDULE

<i>Description of Disease or Injury</i>	<i>Description of Process</i>
1. Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelæ.	Any process involving the use of a nitro- or amido- derivative of benzene or its preparations or compounds.
2. Poisoning by carbon bisulphide or its sequelæ.	Any process involving the use of carbon bisulphide or its preparations or compounds.
3. Poisoning by nitrous fumes or its sequelæ.	Any process in which nitrous fumes are evolved.
4. Poisoning by nickel carbonyl or its sequelæ.	Any process in which nickel carbonyl gas is evolved.
5. Arsenic poisoning or its sequelæ.	Handling of arsenic or its preparations or compounds.
6. Lead poisoning or its sequelæ.	Handling of lead or its preparations or compounds.
7. Poisoning by Gonioma Kamassi (African boxwood) or its sequelæ.	Any process in the manufacture of articles from Gonioma Kamassi (African boxwood).
8. Chrome ulceration or its sequelæ.	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
9. Eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	(Repealed; but re-enacted in slightly altered form. See Order dated December 2nd, 1908, <i>infra</i> .)
10. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds.	Handling or use of pitch, tar, or tarry compounds.
11. Scrotal epithelioma (Chimney-sweeps' cancer).	Chimney-sweeping.
12. Nystagmus.	Mining.
13. Glanders.	Care of any equine animal suffering from glanders; handling the carcase of such animal.
14. Compressed air illness or its sequelæ.	Any process carried on in compressed air.
15. Subcutaneous cellulitis of the hand (beat hand).	Mining.



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 Compensation Act of 1906
 

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| 16. Subcutaneous cellulitis over the patella (miners' beat knee).              | Mining. |
| 17. Acute bursitis over the elbow (miners' beat elbow).                        | Mining. |
| 18. Inflammation of the synovial lining of the wrist-joint and tendon sheaths. | Mining. |

ORDER of the Secretary of State, Dated December 2, 1908, Extending the Provisions of the Workmen's Compensation Act, 1906, to Certain Industrial Diseases, and Amending the Previous Order of May 22nd, 1907.

In pursuance of the power conferred on me by section 8, sub-section 6, of the Workmen's Compensation Act, 1906, I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, do hereby make the following Order:—

(1.) Subject to the modifications hereinafter specified, the provisions of section 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the diseases, injuries, and processes, specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases and injuries were included in the first column of the Third Schedule of the Act, and as if the said processes were set opposite in the second column of that Schedule to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

(2.) A glass worker suffering from cataract shall be entitled to compensation under the provisions of the said section, as applied by this Order, for a period not longer than six months in all, nor for more than four months unless he has undergone an operation for cataract.

(3.) In the application of the provisions of section 8 to telegraphists' cramp, so far as regards a workman employed by the Postmaster General, the Post Office Medical Officer under whose charge the workman is placed shall, if authorized to act for the purpose of the said section by the Postmaster-General, be substituted for the Certifying Surgeon.

(4.) The Order of the 22nd May, 1907, so far as it applies to eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust, is revoked, except as regards cases arising before the date of this Order.

H. J. GLADSTONE,  
One of His Majesty's Principal  
Secretaries of State.

Whitehall,  
2nd December, 1908.

## National Insurance Act of 1911

## SCHEDULE

<i>Description of Disease or Injury</i>	<i>Description of Process</i>
Cataract in glassworkers.	Processes in the manufacture of glass involving exposure to the glare of molten glass.
Telegraphists' cramp.	Use of telegraphic instruments.
Eczematous ulceration of the skin produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	

## NATIONAL INSURANCE ACT

(1 and 2 George V, c. 55)

AN ACT to provide for Insurance against Loss of Health and for the Prevention and Cure of Sickness and for Insurance against Unemployment, and for purposes incidental thereto. (16th December, 1911.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## PART I

## NATIONAL HEALTH INSURANCE

*Insured persons.*

1. (1) Subject to the provisions of this Act, all persons of the age of sixteen and upwards who are employed within the meaning of this Part of this Act shall be, and any such persons who are not so employed but who possess the qualifications herein-after mentioned may be, insured in manner provided in this Part of this Act, and all persons so insured (in this Act called "insured persons") shall be entitled in the manner and subject to the conditions provided in this Act to the benefits in respect of health insurance and prevention of sickness conferred by this Part of this Act.

(2) The persons employed within the meaning of this Part of this Act (in this Act referred to as "employed contributors") shall include all per-

## National Insurance Act of 1911

sons of either sex, whether British subjects or not, who are engaged in any of the employments specified in Part I of the First Schedule to this Act, not being employments specified in Part II of that schedule:

Provided that the Insurance Commissioners herein-after constituted may, with the approval of the Treasury, by a special order made in manner herein-after provided, provide for including amongst the persons employed within the meaning of this Part of this Act any persons engaged in any of the excepted employments specified in Part II of the said schedule either unconditionally or subject to such conditions as may be specified in the order.

(3) The persons not employed within the meaning of this Part of this Act who are entitled to be insured persons include all persons who either—

(a) are engaged in some regular occupation and are wholly or mainly dependent for their livelihood on the earnings derived by them from that occupation; or

(b) have been insured persons for a period of five years or upwards; and the persons possessing such qualifications who become or continue to be insured persons are in this Act referred to as voluntary contributors: Provided always that no person whose total income from all sources exceeds one hundred and sixty pounds a year shall be entitled to be a voluntary contributor unless he has been insured under this Part of this Act for a period of five years or upwards.

(4) Except as herein-after provided, nothing in this section shall require or authorize a person of the age of sixty-five or upwards not previously insured under this Part of this Act to become so insured.

*Exemptions.*

2. (1) Where any person employed within the meaning of this Part of this Act proves that he is either—

(a) in receipt of any pension or income of the annual value of twenty-six pounds or upwards not dependent upon his personal exertions;

or

(b) ordinarily and mainly dependent for his livelihood upon some other person;

he shall be entitled to a certificate exempting him from the liability to become or to continue to be insured under this Part of this Act.

(2) All claims for exemption shall be made to, and certificates of exemption granted by, the Insurance Commissioners in the prescribed manner and subject to the prescribed conditions, and may be so made and granted before, as well as after, the commencement of this Act: Provided that the regulations of the Insurance Commissioners may provide for claims under this section being made to and certificates granted by approved societies and Insurance Committees herein-after constituted.

## National Insurance Act of 1911

## CONTRIBUTIONS

*Contributions by injured persons, employers, and the Treasury.*

3. Except as otherwise provided by this Act, the funds for providing the benefits conferred by this Part of this Act and defraying the expenses of the administration of those benefits shall be derived as to seven-ninths (or, in the case of women, three-fourths) thereof from contributions made by or in respect of the contributors by themselves or their employers, and as to the remaining two-ninths (or, in the case of women, one quarter) thereof from moneys provided by Parliament.

*Rates and rules for contributions by employed contributors and their employers.*

4. (1) The contributions payable in respect of employed contributors shall be at the rate specified in Part I of the Second Schedule to this Act (herein-after referred to as the employed rate), and shall comprise contributions by the contributors and contributions by their employers at the rates specified in that Part of that Schedule, and shall be payable at weekly or other prescribed intervals:

Provided that, in the case of an employed contributor of the age of twenty-one or upwards whose remuneration does not include the provision of board and lodging by the employer and the rate of whose remuneration does not exceed two shillings a working day, such part of the contributions payable in respect of him as is specified in the said schedule shall be paid out of moneys provided by Parliament.

(2) The employer shall, in the first instance, pay both the contributions payable by himself (in this Act referred to as the employer's contributions), and also on behalf of the employed contributor the contributions payable by such contributor, and shall be entitled to recover from the contributor by deduction from his wages or otherwise the amount of the contributions so paid by him on behalf of the contributor, in accordance with the rules set out in the Third Schedule to this Act.

(3) Contributions in respect of employed contributors shall cease to be payable on their attaining the age of seventy.

(4) The employer of a person who though employed within the meaning of this Part of this Act is not insured under this Part of this Act by reason either—

(a) that, not having previously been an insured person, he has become employed within the meaning of this Part of this Act after attaining the age of sixty-five; or

(b) that he has obtained and still holds a certificate of exemption under this Part of this Act;

## National Insurance Act of 1911

shall be liable to pay the like contributions as would have been payable as employer's contributions if such person had been an employed contributor, and such contributions shall be carried to such account and dealt with in such manner as may be prescribed by regulations made by the Insurance Commissioners, and those regulations may provide for applying the sums standing to the credit of the account, or any part thereof, for the benefit of any persons in respect of whom contributions have been so paid, in the event of such persons subsequently becoming employed contributors.

*Rates and rules for contributions by voluntary contributors.*

5. (1) The contributions payable by voluntary contributors shall be at the rate appropriate to their age at the date of their entry into insurance ascertained in accordance with a table to be prepared by the Insurance Commissioners (herein-after referred to as the voluntary rate) and shall be paid by the voluntary contributors at weekly or other prescribed intervals:

Provided that—

(a) In the case of a person who enters into insurance within six months after the commencement of this Act, the voluntary rate shall, if he is below the age of forty-five at the date of entering into insurance be the same as the employed rate, and, if he is of the age of forty-five or upwards, be such rate, ascertained according to a table to be prepared by the Insurance Commissioners, as, having regard to his age at that date, will be sufficient to cover seven-ninths, or, in the case of a woman, three-fourths, of the benefits conferred by this Part of this Act;

(b) Where a person, having been an employed contributor for five years or upwards, becomes a voluntary contributor, the rate of contribution payable by him shall continue to be the employed rate.

(2) Contributions by voluntary contributors shall cease to be payable on their attaining the age of seventy.

*Change from voluntary rate to employed rate and vice versa.*

6. (1) Where an insured person has become a member of an approved society as a voluntary contributor, the rate of contributions payable in respect of him shall, notwithstanding that he becomes employed within the meaning of this Part of this Act, remain the voluntary rate, unless at any time after becoming so employed he gives notice in the prescribed manner of his wish to be transferred to the employed rate.

## National Insurance Act of 1911

(2) Where he gives such notice, the rate payable in respect of him shall be the employed rate, but in such case the rate of sickness benefit payable in respect of him shall be such reduced rate as would have been payable had he not previously been insured, subject to such addition as may, according to tables prepared by the Insurance Commissioners, represent the value at that time of the contributions previously paid by him.

(3) Where he does not give such notice, and until he does so, the contributions payable by his employer in respect of him during any period of employment within the meaning of this Part of this Act shall be the same as if he had been transferred to the employed rate, and the contributions so paid by the employer shall be treated as in part satisfaction of the contributions at the voluntary rate payable by the contributor, and, if the contributor fails to pay the balance, he shall be deemed to be in arrear to that extent.

(4) Where an employed contributor within five years from his entry into insurance ceases to be employed within the meaning of this Part of this Act and becomes a voluntary contributor, he shall be deemed to be in arrear, as from the date when he so became a voluntary contributor, to the amount of the difference between the aggregate contributions paid by or in respect of him since his entry into insurance and the aggregate of the contributions which would have been payable by him had he throughout been a voluntary contributor, and the difference between any reserve value which is credited to the approved society of which he is a member in respect of him and the reserve value (if any) which would have been credited to that society in respect of him had he originally become a voluntary contributor shall be cancelled.

*Power to make regulations for the payment of contributions.*

7. Subject to the provisions of this Act, the Insurance Commissioners may make regulations providing for any matters incidental to the payment and collection of contributions payable under this Part of this Act, and in particular for—

- (a) payment of contributions whether by means of adhesive or other stamps affixed to or impressed upon books or cards, or otherwise, and regulating the manner, times, and conditions in, at, and under which such stamps are to be affixed or impressed or payments are otherwise to be made;
- (b) the entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards belong;
- (c) the issue, sale, custody, production, and delivery up of books or

## National Insurance Act of 1911

cards and the replacement of books or cards which have been lost, destroyed, or defaced.

## BENEFITS

*Benefits.*

8. (1) Subject to the provisions of this Act, the benefits conferred by this Part of this Act upon insured persons are —

- (a) Medical treatment and attendance, including the provision of proper and sufficient medicines, and such medical and surgical appliances as may be prescribed by regulations to be made by the Insurance Commissioners (in this Act called "medical benefit");
- (b) Treatment in sanatoria or other institutions or otherwise when suffering from tuberculosis, or such other diseases as the Local Government Board with the approval of the Treasury may appoint (in this Act called "sanatorium benefit");
- (c) Periodical payments whilst rendered incapable of work by some specific disease or by bodily or mental disablement, of which notice has been given, commencing from the fourth day after being so rendered incapable of work, and continuing for a period not exceeding twenty-six weeks (in this Act called "sickness benefit");
- (d) In the case of the disease or disablement continuing after the determination of sickness benefit, periodical payments so long as so rendered incapable of work by the disease or disablement (in this Act called "disablement benefit");
- (e) Payment in the case of the confinement of the wife or, where the child is a posthumous child, of the widow of an insured person, or of any other woman who is an insured person, of a sum of thirty shillings (in this Act called "maternity benefit");
- (f) In the case of persons entitled under this Part of this Act to any of the further benefits mentioned in Part II of the Fourth Schedule to this Act (in this Act called "additional benefits") such of those benefits as they may be entitled to.

(2) Subject to the provisions of this Part of this Act, the rates of sickness benefit and disablement benefit to which insured persons are entitled shall be the rates specified in Part I of the Fourth Schedule to this Act.

(3) In the case of insured persons who have attained the age of seventy, the right to sickness benefit and disablement benefit shall cease.

(4) No insured person shall be entitled to any benefit during any period when he is resident either temporarily or permanently outside the United Kingdom:

Provided that, if a person is temporarily resident in the Isle of Man or the Channel Islands, he shall not, whilst so resident, be disentitled to

## National Insurance Act of 1911

benefits other than medical benefit and that, if with the consent of the society or committee by which the benefit is administered a person is temporarily resident outside the United Kingdom elsewhere than in the Isle of Man or the Channel Islands, the society or committee may allow him, whilst so resident, to continue to receive sickness or disablement benefit, and that a person resident out of the United Kingdom shall not be disentitled to maternity benefit in respect of the confinement of his wife, if his wife at the time of her confinement is resident in the United Kingdom.

(5) Where an insured person, having been in receipt of sickness benefit, recovers from the disease or disablement in respect of which he receives such benefit, any subsequent disease or disablement, or a recurrence of the same disease or disablement, shall be deemed to be a continuation of the previous disease or disablement, unless in the meanwhile a period of at least twelve months has elapsed, and at least fifty weekly contributions have been paid by or in respect of him.

(6) Where a woman confined of a child is herself an insured person, and is a married woman, or, if the child is a posthumous child, a widow, she shall be entitled to sickness benefit or disablement benefit (as the case may be) in respect of her confinement in addition to the maternity benefit to which she or her husband may be entitled, but, save as aforesaid, a woman shall not be entitled to sickness benefit or disablement benefit for a period of four weeks after her confinement, unless suffering from disease or disablement not connected directly or indirectly with her confinement.

Medical benefit shall not include any right to medical treatment or attendance in respect of a confinement.

(7) Where a pension or superannuation allowance is payable by an approved society in whole or in part as an additional benefit under this Part of this Act, or out of any fund to which contributions have been made in accordance with paragraph (10) of Part II of the Fourth Schedule to this Act, it may be made a condition of the grant of the pension or allowance that a member of the society shall, whilst in receipt of such pension or allowance, be excluded in whole or in part from his right to sickness benefit and disablement benefit, or to either of such benefits.

(8) Notwithstanding anything in this Part of this Act no insured person shall be entitled—

- (a) to medical benefit during the first six months after the commencement of this Act;
- (b) to sickness benefit, unless and until twenty-six weeks have elapsed since his entry into insurance, and at least twenty-six weekly contributions have been paid by or in respect of him;
- (c) to disablement benefit, unless and until one hundred and four weeks have elapsed since his entry into insurance, and at least one



## National Insurance Act of 1911

hundred and four weekly contributions have been paid by or in respect of him;

(d) to maternity benefit, unless and until twenty-six, or in the case of a voluntary contributor fifty-two, weeks have elapsed since his entry into insurance, and at least twenty-six, or in the case of a voluntary contributor fifty-two, weekly contributions have been paid by or in respect of him.

(9) As soon as the sums credited to approved societies as reserve values in respect of persons who enter into insurance within one year after the commencement of this Act have been written off in manner provided by this Part of this Act, the benefits payable to insured persons under this Part of this Act shall be extended in such manner as Parliament may determine.

*Reduced rates of benefit in certain cases.*

9. (1) In the case of insured persons who are under the age of twenty-one years and unmarried, sickness benefit and disablement benefit shall be at the reduced rates specified in Table B, in Part I of the Fourth Schedule to this Act:

Provided that, where any such person being a member of an approved society proves that one or more members of his family are wholly or mainly dependent upon him, the society shall dispense with such reduction.

(2) Where, in the case of any insured persons, the rate of sickness benefit or disablement benefit (as the case may be) exceeds two-thirds of the usual rate of wages or other remuneration earned by such persons, the rate of such benefit may be reduced to such an extent as the society or committee administering the benefit, with the consent of the Insurance Commissioners, determines; but, where such reduction is made, provision shall be made by the society or committee, with the like consent, for the grant of one or more additional benefits of a value equivalent to such reduction.

(3) The rate of sickness benefit shall be reduced in accordance with Table C in Part I of the Fourth Schedule to this Act in the case of any insured person who becomes an employed contributor within one year after the commencement of this Act, and is at the date of so becoming an employed contributor of the age of fifty years or upwards and the number of weekly contributions paid by or in respect of him is, at the date of any claim by him for such benefit, less than five hundred.

(4) In the case of every person who, not having been previously insured under this Part of this Act, becomes an employed contributor subsequently to the expiration of one year from the commencement of this Act, and is, at the time of so becoming an employed contributor, of the age of seventeen or upwards, the rate of sickness benefit to which he is entitled shall (unless he proves that his time since he attained the age of seventeen

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National Insurance Act of 1911

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has been spent in a school or college, in indentured apprenticeship or otherwise under instruction without wages, or otherwise in the completion of his education, or unless he undertakes himself to pay the difference between the voluntary rate and the employed rate, or pays to the Insurance Commissioners, to be credited to the society, such capital sum as will be sufficient to secure him benefits at the full rate) be such reduced rate as may be fixed in accordance with tables to be prepared by the Insurance Commissioners, but not in any case less than five shillings a week:

Provided that, if at any time subsequently such person would become entitled to sickness benefit at a higher rate if he were treated as having become an employed contributor as from the time when he attained the age of seventeen, or as from the expiration of one year after the commencement of this Act, whichever date may be the later, and as being in arrear for all contributions which, had he become an employed contributor at that date, would have been payable in respect of him between that date and the date when he actually became an employed contributor, he shall, if he so elects, be entitled to be so treated.

*Reduced rates of benefits where contributions are in arrear.*

10. (1) Where an insured person being a member of an approved society is in arrear to an amount greater than thirteen weekly contributions a year on the average since his entry into insurance, his right to benefits under this Part of this Act other than medical benefit, sanatorium benefit, and maternity benefit shall be suspended, and, where he is in arrears to an amount greater than twenty-six weekly contributions a year on the average since his entry into insurance, his right to medical benefit, sanatorium benefit, and maternity benefit shall be suspended, and at the expiration of the calendar year next after the date when he becomes suspended from all benefits any sums credited to the society in respect of him, calculated in the prescribed manner, shall, if his right to benefits still continues to be suspended, be carried to such account and dealt with in such manner as may be prescribed for the benefit (except so far as such sums comprise sums in respect of a reserve value) of the society or any other society to which such person may subsequently be transferred:

Provided that, if at any time after suspension from any such benefits he becomes employed within the meaning of this Part of this Act, he shall be entitled to those benefits at such rate, after the lapse of such time and after the payment of such number of contributions, as would have been applicable to his case had he not previously been an insured person, but, if he so elects at any time, the benefits to which he is entitled shall be such as he would be entitled to, were the period from the time of his original entry into insurance taken as a whole.

## National Insurance Act of 1911

(2) Where an employed contributor claiming sickness benefit is at the date of such claim in arrears but the arrears are less than as aforesaid, then the rate of sickness benefit shall be reduced to a sum not less than five shillings a week, or the time when sickness benefit commences deferred, proportionately to the amount of arrears in accordance with the table in the Fifth Schedule to this Act.

(3) Where a voluntary contributor is in arrears, he shall be liable to such proportionate reduction of benefits as may be prescribed.

(4) In calculating arrears of contributions, no account shall be taken of any arrears accruing—

(a) during any period when the person in question has been, or but for this section or any other provision of this Act disentitling a person to such benefit, would have been, in receipt of sickness benefit or disablement benefit; or

(b) in the case of a woman who, being an insured person, is herself entitled to maternity benefit, during two weeks before and four weeks after her delivery, or in the case of maternity benefit payable in respect of the posthumous child of an insured person, during the period subsequent to the father's death; or

(c) in the case of an employed contributor, during the first twelve months after the commencement of this Act;

but, save as aforesaid, contributions shall be deemed to be payable in respect of every week from the date of entry into insurance.

(5) Where an insured person has paid any arrears of contributions payable by or in respect of him which accrued during the calendar year current at the date of payment and the previous calendar year, he shall be treated for the purposes of this section as if the arrears so paid had never become due:

Provided that, if such person is at the date of payment or subsequently within one month thereafter becomes incapable of work by reason of disease or disablement, he shall, for the purposes of this section, be deemed to be still in arrear in respect of the amount so paid until after the expiration of one month from the date of such payment.

(6) Any approved society may, if it thinks fit, excuse any part of the arrears which may have accrued due by or in respect of any member who is an employed contributor during any period of unemployment not exceeding such part as would have been payable by the employer had the member continued in his last employment, and in such case the amount of the arrears of that member shall be reduced accordingly.

(7) The average amount of arrears for the purposes of this section shall be calculated in such manner as the Insurance Commissioners may prescribe.

*Provisions in the case of contributors entitled to compensation or damages.*  
6 Edw. 7, c. 58, 43 & 44 Vict., c. 42.

11.—(1) Where an insured person has received or recovered or is entitled to receive or recover, whether from his employer or any other person, any compensation or damages under the Workmen's Compensation Act, 1906, or any scheme certified thereunder, or under the Employers' Liability Act, 1880, or at common law, in respect of any injury or disease, the following provisions shall apply:—

- (a) No sickness benefit or disablement benefit shall be paid to such person in respect of that injury or disease in any case where any weekly sum or the weekly value of any lump sum paid or payable by way of compensation or damages is equal to or greater than the benefit otherwise payable to such person, and, where any such weekly sum or the weekly value of any such lump sum is less than the benefit in question, such part only of the benefit shall be paid as, together with the weekly sum or the weekly value of the lump sum, will be equal to the benefit:
- (b) The weekly value of any such lump sum as aforesaid may be determined by the society or committee by which the sickness and disablement benefits payable to such person are administered, but, if the insured person is aggrieved by such determination, the matter shall be settled in manner provided by this Part of this Act for settling disputes between insured persons, and societies or committees:
- (c) Where an agreement is made as to the amount of such compensation as aforesaid, and the amount so agreed is less than ten shillings a week, or as to the redemption of a weekly payment by a lump sum, under the Workmen's Compensation Act, 1906, the employer shall, within three days thereafter, or such longer time as may be prescribed, send to the Insurance Commissioners, or to the society or committee concerned, notice in writing of such agreement giving the prescribed particulars thereof, and proviso (d) to paragraph (9) of the Second Schedule of the Workmen's Compensation Act, 1906, (which relates to the powers of registrars of county courts to refuse to record memoranda of agreements and to refer the matter to the judge) shall, in cases where the workman is an insured person, apply to agreements as to the amount of compensation in like manner as to agreements as to the redemption of weekly payments by lump sums.
- (2) Where an insured person appears to be entitled to any such compensation or damages as aforesaid and unreasonably refuses or neglects

## National Insurance Act of 1911

to take proceedings to enforce his claim, it shall be lawful for the society or committee concerned, either—

- (a) at its own expense, to take in the name and on behalf of such person such proceedings, in which case any compensation or damages recovered shall be held by the society or committee as trustee for the insured person; or
- (b) to withhold payment of any benefit to which apart from this section such person would be entitled.

In the event of the society or committee concerned taking proceedings as aforesaid and failing in the proceedings, it shall be responsible for the costs of the proceedings as if it were claiming on its own account.

(3) Nothing in this section shall prevent the society or committee paying to an insured person benefit by way of advance pending the settlement of his claim for compensation or damages, and any advance so made shall, without prejudice to any other method of recovery, be recoverable by deductions from or suspension of any benefits which may subsequently become payable to such person.

*Provisions in the case of contributors who are inmates of hospitals, &c.*

12.—(1) No payment shall be made on account of sickness disablement or maternity benefit to or in respect of any person during any period when the person to or in respect of whom the benefit is payable is an inmate of any workhouse, hospital, asylum, convalescent home, or infirmary, supported by any public authority or out of any public funds or by a charity, or voluntary subscriptions, or of a sanatorium or similar institution approved under this Part of this Act.

(2) During such period as aforesaid the sum which would otherwise have been payable on account of any such benefit to or in respect of such person—

- (a) shall be paid to or applied in whole or in part for the relief or maintenance of his dependants (if any) in such manner as the society or committee by which the benefit is administered, after consultation whenever possible with such person, thinks fit; or
- (b) if such person, being a member of an approved society, is an inmate of a sanatorium or similar institution in which he is receiving treatment in accordance with the provisions of this Part of this Act, and has no dependants, shall be paid to the Insurance Committee towards the general purposes thereof; or
- (c) if such person, being a member of an approved society, is an inmate of a hospital, asylum, convalescent home, or infirmary supported by a charity or by voluntary subscriptions and has no dependants, shall, if an agreement for the purpose has been made between the society or committee and the hospital, asylum, con-

## National Insurance Act of 1911

valescent home, or infirmary, be paid, in whole or in part, according to such agreement, towards the maintenance of such person in the hospital, asylum, convalescent home, or infirmary:

Provided that—

- (i) any part of such sum which is not so applied as aforesaid may, if the society or committee thinks fit, be applied in the provision of any surgical appliances required for the insured person or otherwise for his benefit;
- (ii) if such an inmate as aforesaid is a married woman or widow, and the sums so payable or applicable as aforesaid include the sums which would have been payable both on account of sickness or disablement benefit and on account of maternity benefit, no part of the sum which would otherwise be payable on account of maternity benefit shall be paid or applied for the relief or maintenance of her dependants, but such sum may be paid to the hospital, asylum, convalescent home, or infirmary of which she is an inmate as aforesaid in like manner as if she had no dependants; and
- (iii) where any person who is entitled to any benefit under this Part of this Act, or a woman whose husband is entitled to maternity benefit in respect of her confinement, applies for admission to any workhouse infirmary, admission thereto shall not be refused on the ground only of the right to such benefit.

*Power to vary benefits in certain cases.*

13.—(1) Any approved society may submit to the Insurance Commissioners a scheme for substituting any of the additional benefits for sickness benefit and disablement benefit or either of those benefits or any part thereof, and the scheme may provide as respects the members of the society to whom the scheme applies that any such benefits shall be abolished or the rate thereof reduced or, in the case of sickness benefit, the commencement thereof postponed; and the scheme may contain such incidental and consequential provisions as appear necessary for adapting the other provisions of this Part of this Act to the members to whom the scheme applies.

(2) The scheme shall apply either to all members of the society or to any specified class thereof or to any members of the society who may elect to come under the scheme, according as may be provided by the scheme.

(3) A scheme made under this section shall not have any effect unless and until confirmed by the Insurance Commissioners, and the Insurance Commissioners shall not confirm any such scheme unless satisfied that the value of the additional benefits conferred by the scheme is equivalent to the value of the benefits for which they are substituted, and that, in

## National Insurance Act of 1911

view of the special circumstances of the members or class of members intended to come under the scheme, there is good reason for substituting the additional benefits conferred by the scheme for the benefits for which they are substituted.

(4) Nothing in this section or in any scheme made thereunder shall affect the amount of any reserve value to be credited to a society in respect of a member, and such reserve values shall be calculated as if the scheme had not been made.

## ADMINISTRATION OF BENEFITS

*Administration of benefits by approved societies or the Insurance Committee.*

14.—(1) Sickness benefit, disablement benefit, and maternity benefit shall be administered, in the case of insured persons who are members of an approved society, by and through the society, or a branch thereof, and in other cases by and through the Insurance Committees; medical and sanatorium benefits shall in all cases be administered by and through the Insurance Committees, additional benefits shall be administered by the society or branch of which the persons entitled thereto are members, except where such benefits are in the nature of medical benefits, in which case they shall be administered by and through the Insurance Committees.

(2) Subject to the provisions of this Part of this Act, an approved society may, with the consent of the Insurance Commissioners, provide for the application of its existing rules or make new rules with regard to the manner and time of paying or distributing, and mode of calculating, benefits, suspension of benefits, notices and proof of disease or disablement, behaviour during disease or disablement, and the visiting of sick or disabled persons, and for the infliction and enforcement of penalties (whether by way of fines or suspension of benefits or otherwise) in the case of any member being an insured person who is guilty of any breach of any such rule, or of any imposition or attempted imposition in respect of any benefit under this Part of this Act, and may, from time to time with the like consent, alter or repeal any such rules; but—

- (a) no fine imposed under any such rule shall exceed ten shillings or, in the case of repeated breaches of rules, twenty shillings;
- (b) no such rule shall provide for the suspension of any benefit for a period exceeding one year;
- (c) every such rule relating to the visiting of insured persons by visitors appointed by the society shall provide that women shall not be visited otherwise than by women;
- (d) every such rule relating to behaviour during disease or disablement shall be in the prescribed form;

## National Insurance Act of 1911

- (e) no such rule shall prescribe any penalty, nor shall any insured person be subject to any penalty, whether by suspension of benefit or otherwise, on account of the refusal by any such person to submit to a surgical operation, or vaccination, or inoculation of any kind, unless such refusal in the case of a surgical operation of a minor character is considered by the society, or on appeal the Insurance Commissioners, unreasonable;
- (f) no such rule shall provide for inflicting as a penalty for breach of rules or imposition or attempted imposition on the part of an insured person suspension of maternity benefit in respect of the confinement of his wife where his wife has not herself been guilty of any such breach, imposition, or attempted imposition.
- (3) The Insurance Committee shall, subject to the approval of the Insurance Commissioners, make rules in respect of any of the matters mentioned in the last preceding subsection with regard to the administration of benefits by the committee;
- Provided that no such rule relating to anything to be done by, to, or through the Post Office shall be made without the consent of the Postmaster-General.
- (4) Where, under any such rule as aforesaid, payment of sickness or disablement benefit is suspended on the ground that the disease or disablement has been caused by the misconduct of the person claiming the benefit, such person shall not thereby become disentitled to medical benefit.
- (5) Where under any Act regulating the constitution of a society which becomes an approved society the rules of the society are required to be registered, any rules approved under this section by the Insurance Commissioners shall forthwith be registered, but till so registered shall have effect as if they had been duly registered.

*Administration of medical benefit.*

15.—(1) Every Insurance Committee shall, for the purpose of administering medical benefit, make arrangements with duly qualified medical practitioners in accordance with regulations made by the Insurance Commissioners.

(2) The regulations made by the Insurance Commissioners shall provide for the arrangements made being subject to the approval of the Insurance Commissioners and being such as to secure that insured persons shall, save as herein-after provided, receive adequate medical attendance and treatment from the medical practitioners with whom arrangements are so made, and shall require the adoption by every Insurance Committee of such system as will secure—

- (a) the preparation and publication of lists of medical practitioners



## National Insurance Act of 1911

- who have agreed to attend and treat insured persons whose medical benefit is administered by the committee;
- (b) a right on the part of any duly qualified medical practitioner who is desirous of being included in any such list as aforesaid of being so included, but, where the Insurance Commissioners, after such inquiry as may be prescribed, are satisfied that his continuance in the list would be prejudicial to the efficiency of the medical service of the insured, they may remove his name from the list;
  - (c) a right on the part of any insured person of selecting, at such periods as may be prescribed, from the appropriate list the practitioner by whom he wishes to be attended and treated, and, subject to the consent of the practitioner so selected, of being attended and treated by him;
  - (d) the distribution amongst, and, so far as practicable, under arrangements made by, the several practitioners whose names are on the lists, of the insured persons who after due notice have failed to make any selection, or who have been refused by the practitioner whom they have selected;
  - (e) the provision of medical attendance and treatment, on the same terms as to remuneration as those arranged with respect to insured persons, to members of any friendly society which, or a separate section of which, becomes an approved society who were such members at the date of the passing of this Act, and who are not entitled to medical benefit under this Part of this act by reason either that they are of the age of sixty-five or upwards at the date of the commencement of this Act, or that being subject to permanent disablement at that date they are not qualified to become insured persons:

Provided that, if the Insurance Commissioners are satisfied after inquiry that the practitioners included in any list are not such as to secure an adequate medical service in any area, they may dispense with the necessity of the adoption of such system as aforesaid as respects that area, and authorise the Committee to make such other arrangements as the Commissioners may approve; or the Commissioners may themselves make such arrangements as they think fit, or may suspend the right to medical benefit in respect of any insured persons in the area for such period as they think fit, and pay to each such person a sum equal to the estimated cost of his medical benefit during that period, and, where the Commissioners take any such action themselves, they shall retain and apply for the purpose such part of the sums payable to the Insurance Committee in respect of medical benefit as may be required.

(3) The regulations made by the Insurance Commissioners shall authorise the Insurance Committee by which medical benefit is adminis-

## National Insurance Act of 1911

tered to require any persons whose income exceeds a limit to be fixed by the Committee, and to allow any other persons, in lieu of receiving medical benefit under such arrangements as aforesaid, to make their own arrangements for receiving medical attendance and treatment (including medicines and appliances), and in such case the Committee shall, subject to the regulations, contribute from the funds out of which medical benefit is payable towards the cost of medical attendance and treatment (including medicines and appliances) for such persons sums not exceeding in the aggregate the amounts which the Committee would otherwise have expended in providing medical benefit for them.

(4) The regulations shall provide that, in the case of persons who are entitled to receive medical attendance and treatment under any system or through any institution existing at the time of the passing of this Act and approved by the Insurance Committee and the Insurance Commissioners, such medical attendance and treatment may be treated as, or as part of, their medical benefit under this Part of this Act, and may provide for the Committee contributing towards the expenses thereof the whole or any part of the sums which would be contributed in the case of persons who have made their own arrangements as aforesaid, so, however, that such regulations shall secure that no person be deprived of his right, if he so elects, of selecting the duly qualified medical practitioner by whom he wishes to be attended and treated, in accordance with the foregoing provisions of this section.

(5) Every such Committee shall also make provision for the supply of proper and sufficient drugs and medicines and prescribed appliances to insured persons in accordance with regulations made by the Insurance Commissioners, which shall provide for the arrangements made being subject to the approval of the Insurance Commissioners and being such as to enable insured persons to obtain from any persons, firms, or bodies corporate with whom arrangements have been made such drugs, medicines, and appliances if ordered by the medical practitioner by whom they are attended, and shall require the adoption by every Insurance Committee of such a system as will secure—

- (a) The preparation and publication of lists of persons, firms, and bodies corporate who have agreed to supply drugs, medicines, and appliances to insured persons whose medical benefit is administered by the Committee, according to such scale of prices as may be fixed by the Committee;
- (b) A right on the part of any person, firm, or body corporate desirous of being included in any such list as aforesaid of being so included, for the purpose of supplying such drugs, medicines, and appliances as such person, firm, or body corporate is entitled by law and authorised by the Committee to supply, except in cases

## National Insurance Act of 1911

where the Insurance Commissioners after inquiry are satisfied that the inclusion or continuance of the person, firm, or body corporate in such list would be prejudicial to the efficiency of the service:

Provided that—

(i) If the Insurance Commissioners are satisfied that the scale of prices fixed by the Committee is reasonable, but that the persons, firms, or bodies corporate included in any list are not such as to secure an adequate and convenient supply of drugs, medicines, and appliances in any area, they may dispense with the necessity of the adoption of such system as aforesaid as respects that area and authorise the Committee to make such other arrangements as the Commissioners may approve;

(ii) Except as may be provided by regulations made by the Insurance Commissioners, no arrangement shall be made by the Insurance Committee with a medical practitioner under which he is bound or agrees to supply drugs or medicine to any insured persons;

(iii) Subject to the regulations made by the last foregoing proviso

31 & 32 Vict.  
c. 121, 8 Edw.  
7, v. 55. the regulations shall prohibit arrangements for the dispensing of medicines being made with persons other

than persons, firms, or bodies corporate entitled to carry on the business of a chemist and druggist under the provisions of the Pharmacy Act, 1868, as amended by the Poisons and Pharmacy Act, 1908, who undertake that all medicines supplied by them to insured persons shall be dispensed either by or under the direct supervision of a registered pharmacist or by a person who, for three years immediately prior to the passing of this Act, has acted as a dispenser to a duly qualified medical practitioner or a public institution;

(iv) Nothing in this Act shall interfere with the rights and privileges conferred by the Apothecaries Act, 1815, 55 Geo. 3,  
c. 194. upon any person qualified under that Act to act as an assistant to any apothecary in compounding and dispensing medicines.

(6) There shall in each year be paid to the Insurance Committee for each county or county borough out of moneys credited to a society which has members resident in the county or county borough such sum in respect of the medical benefit of such members and the cost of administration thereof as may be agreed between the society and committee or, in default of agreement, may be determined by the Insurance Commissioners.

(7) If in any year the amount payable to an Insurance Committee in respect of all persons for the administration of whose medical benefit it is responsible is insufficient to meet the estimated expenditure thereon, the Committee may, through the Insurance Commissioners, transmit to the

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National Insurance Act of 1911

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Treasury and to the council of the county or county borough an account showing the amount so payable and the estimated expenditure, and the Treasury and the county council or the council of the county borough may, if they think fit and if satisfied that the amounts so payable and the proposed expenditure are reasonable and proper in the circumstances, sanction the expenditure.

(8) The Treasury and the council of the county or county borough sanctioning any such expenditure as aforesaid shall thereupon each be liable to make good, in the case of the Treasury out of moneys provided by Parliament, and, in the case of the council of a county or county borough, out of the county fund or borough fund or borough rate, as the case may be, one half of any sums so sanctioned by them and expended by the Insurance Committee on medical benefit in the course of the year in excess of the amounts so payable to the Insurance Committee as aforesaid.

*Administration of sanatorium benefit.*

16.—(1) For the purpose of administering sanatorium benefit, Insurance Committees shall make arrangements, to the satisfaction of the Insurance Commissioners,—

(a) with a view to providing treatment for insured persons suffering from tuberculosis or any other such disease as aforesaid in sanatoria and other institutions, with persons or local authorities (other than poor law authorities) having the management of sanatoria or other institutions approved by the Local Government Board, which treatment it shall be lawful for a local authority to provide as respects insured persons resident outside as well as respects those resident within their area; and

(b) with a view to providing treatment for such persons otherwise than in sanatoria or other institutions, with persons and local authorities (other than poor law authorities) undertaking such treatment in a manner approved by the Local Government Board, which treatment (including the appointment of officers for the purpose) it shall be lawful for a local authority, if so authorised by the Local Government Board, to undertake.

(2) The sums available for defraying the expenses of sanatorium benefit in each year shall be—

(a) one shilling and threepence in respect of each insured person resident in the county or county borough, payable out of the funds out of which benefits are payable under this Part of this Act;

(b) one penny in respect of each such person payable out of moneys provided by Parliament;

Provided that the Insurance Commissioners may retain the whole or

## National Insurance Act of 1911

any part of the sums so payable out of moneys provided by Parliament to be applied, in accordance with regulations made by the Commissioners, for the purposes of research.

(3) An insured person shall not be entitled to sanatorium benefit unless the Insurance Committee recommends the case for such benefit.

(4) An Insurance Committee may, out of the sums available for defraying the expenses of sanatorium treatment, defray in whole or in part the expenses of the conveyance of an insured person to or from any sanatorium or institution to which he may be sent for treatment therein, or may make advances for the purpose.

*Power to extend sanatorium benefit to dependants.*

17.—(1) The Insurance Committee for any county or county borough may, if it thinks fit, extend sanatorium benefit to the dependants of the insured persons resident in the county, or any part of the county, or in the county borough, or any class of such dependants, and in such case the arrangements to be made by the committee shall include arrangements for the treatment of such dependants, and the sums available for sanatorium benefit shall be applicable to the purpose.

(2) If in any year the amount available for defraying the expenses of sanatorium benefit is insufficient to meet the estimated expenditure on sanatorium benefit for insured persons and such dependants, the Insurance Committee may, through the Insurance Commissioners, transmit to the Treasury and the council of the county or county borough an account showing the estimated expenditure for the purpose and the amount of the sums available for defraying the expenses of sanatorium benefit, and the Treasury and council may if they think fit sanction such expenditure.

(3) The Treasury and the council of the county or county borough sanctioning such expenditure as aforesaid shall thereupon each be liable to make good, in the case of the Treasury out of moneys provided by Parliament, and, in the case of the council of the county or county borough, out of the county fund or borough fund or borough rate, as the case may be, one-half of any sums so sanctioned by them and expended by the Insurance Committee on sanatorium benefit for insured persons and their dependants in the course of the year in excess of the amount available for defraying the expenses of the committee on sanatorium benefit.

*Administration of maternity benefit.*

18.—(1) Where the mother of the child is herself an insured person, and is not the wife or, in the case of a posthumous child, the widow of an insured person, maternity benefit shall be treated as a benefit for her and shall be administered in cash or otherwise by the approved society of which she is a member, or, if she is not a member of any society, by the Insurance Committee; in any other case, the benefit shall be treated as a

## National Insurance Act of 1911

benefit for her husband and shall be administered in cash or otherwise by the approved society of which he is a member, or, if he is not a member of any such society, by the Insurance Committee, and shall be payable in respect of a posthumous child as if the husband were still alive:

Provided always that the mother shall decide whether she shall be attended by a duly qualified medical practitioner or by a duly certified midwife, and shall have free choice in the selection of such practitioner or midwife, but if, in the case of a midwife being selected, a duly qualified medical practitioner is subsequently summoned <sup>2 Edw. 7, c. 17.</sup> in pursuance of the rules made under the Midwives Act, 1902, the prescribed fee shall, subject to regulations made by the Insurance Commissioners, be recoverable as part of the maternity benefit.

(2) In deciding whether or not they shall make an order under the Bastardy Laws Amendment Act, 1872, for the payment of the expenses incidental to the birth of a child, the justices <sup>35 & 36 Vict. c. 65.</sup> shall not take into consideration the fact that the mother of the child is entitled to receive maternity benefit under this Part of this Act.

*Punishment of husband in certain cases of neglect.*

19. Without prejudice to any other legal liability, where, under the immediately foregoing section, which relates to the administration of maternity benefit, of this Act, maternity benefit is given or paid to the husband, it shall be the duty of the husband to make adequate provision to the best of his power for the maintenance and care of his wife during her confinement, and for a period of four weeks after her delivery, and if he neglects or refuses to do so he shall be liable upon summary conviction to imprisonment, with or without hard labour, for any term not exceeding one month.

*Reinsurance for the purposes of maternity benefit.*

20. For the purpose of the administration of maternity benefit, the Insurance Commissioners may, if they think fit, by special order provide for the reinsurance with them of the liabilities of all approved societies in respect of maternity benefit, and the order may provide for the method of calculating the premiums to be charged against the several societies in respect of such reinsurances and may contain such other incidental, consequential, and supplemental provisions as may appear necessary for the purpose.

*Power to subscribe to hospitals, &c.*

21. It shall be lawful for an approved society or Insurance Committee to grant such subscriptions or donations as it may think fit to hospitals, dispensaries and other charitable institutions, or for the support of district

## National Insurance Act of 1911

nurses, and to appoint nurses for the purpose of visiting and nursing insured persons, and any sums so expended shall be treated as expenditure on such benefits under this Part of this Act as may be prescribed.

*Power of councils of boroughs and districts to contribute to certain expenditure on medical and sanatorium benefits.*

22.—(1) The council of any borough or urban or rural district may agree with the council of the county in which the borough or district is situate to repay to the latter council the whole or any part of the sums payable by that council in accordance with the provisions of this Part of this Act towards the excess expenditure on medical or sanatorium benefit so far as such excess is properly attributable to the borough or district, and any sums payable by the council of the borough or district in pursuance of such an agreement shall be payable, in the case of a borough, out of the borough fund or borough rate, and, in any other case, as part of the general expenses incurred by the council in the execution of the Public Health Acts.

(2) The agreement may provide that the county council shall not raise any sum on account of any expenditure incurred by them under this Part of this Act for the purpose to which the agreement relates within the borough or urban or rural district the council of which has entered into such agreement, during the continuance of such agreement.

## APPROVED SOCIETIES

*Conditions for the approval of approved societies.*

23.—(1) Any society, that is to say, any body of persons, corporate or unincorporate (not being a branch of another such body), registered or established under any Act of Parliament, or by Royal Charter, or, if not so registered or established, having a constitution of such a character as may be prescribed, which complies with the requirements of this Act relating to approved societies, may be approved by the Insurance Commissioners, and, if so approved, shall be an approved society for the purposes of this Part of this Act;

Provided that, where any society establishes for the purposes of this Part of this Act a separate section consisting of insured persons, whether with or without honorary members not being insured persons, and so constituted as to comply with the requirements of this Act relating to approved societies, such separate section may be approved by the Insurance Commissioners, and, if so approved, shall be an approved society, and the provisions of this Part of this Act relating to the conditions of approval of societies and to approved societies shall apply only to such separate section of the society.

(2) No society shall receive the approval of the Insurance Commissioners unless it satisfies the following conditions:—

National Insurance Act of 1911

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- (i) It must not be a society carried on for profit;
- (ii) Its constitution must provide to the satisfaction of the Insurance Commissioners for its affairs being subject to the absolute control of its members being insured persons or, if the rules of the society so provide, of its members whether insured persons or not, including provision for the election and removal of the committee of management or other governing body of the society, in the case of a society whose affairs are managed by delegates elected by members, by such delegates, and, in other cases, in such manner as will secure absolute control by its members;
- (iii) If the society has honorary members, its constitution must provide for excluding such honorary members from the right of voting in their capacity of members of the society on all questions and matters arising under this Part of this Act.

(3) Applications for approval under this section may be made and approval granted at any time before or after the commencement of this Act, and the Insurance Commissioners may grant approval either unconditionally or subject to the condition of the society taking within such time as the Commissioners may allow such steps as may be necessary to make the society comply with the requirements of this Part of this Act relating to approved societies.

*Power of societies to undertake business under Part I.*

24.—(1) It shall be lawful for any body of persons, corporate or unincorporate, established before the passing of this Act which is desirous of transacting insurance business under this Part of this Act, or of making any amendments in its constitution, or administration, or contributions, or benefits, or otherwise which may be necessary or expedient in consequence of the passing of this Act, notwithstanding anything in the provisions of the Acts under which it is established or registered or carried on, or of its memorandum or articles of association, rules, or other instrument governing its constitution or defining its objects, to do all such acts and things (including the establishment of a separate section as aforesaid) as may be necessary for the purpose of enabling the body to undertake the transaction of such business as soon as may be after the passing of this Act and, if the instrument regulating the constitution of the body contains provisions requiring any interval to elapse before action can be taken, such provisions shall not apply to action taken for the purposes aforesaid.

(2) Subsections (3) and (4) of section seventy of the Friendly Societies Act, 1896, shall not apply to any resolutions for amalgamation or transfer of engagements when the resolution is made expressly for the purposes of this Part of this Act, 59 & 60 Vict. c. 25.



## National Insurance Act of 1911

(3) This section shall come into operation on the passing of this Act, and shall not continue in force beyond the expiration of one year from the commencement of this Act, except so far as may be necessary to enable a society which has undertaken the transaction of insurance business under this Part of this Act to continue to transact such business.

*Special provisions for employers' provident funds, &c.*

25.—(1) Where a society consists of persons entitled to rights in a superannuation or other provident fund established for the benefit of persons employed by one or more employers, the society may be approved, notwithstanding that the employer is entitled to representation on the committee or other body administering the fund to an extent not exceeding one quarter of the total number of the body, if the employer, in addition to the employer's contributions payable by him under this Part of this Act, is responsible for the solvency of the fund or for the benefits payable thereout, or is liable to pay a substantial part of, or to make substantial contributions to, or substantially to supplement, the benefits payable out of the fund:

Provided that no such society as aforesaid shall be approved unless by its constitution it is prohibited so far as concerns the benefits under this Part of this Act from refusing to allow a member to transfer to another approved society, and from refusing to allow a member who is discharged from or leaves the employment of the employer and is unable to obtain admission to another approved society on account of the state of his health to continue a member, and unless its constitution provides for the election of the members of the committee of management (other than the employer's representatives) by ballot:

Provided also that no such society shall be approved if the employer makes membership of such society a condition of employment.

(2) Where, for the purpose of enabling any such society to become an approved society, it is necessary to make any alteration in the existing rules or constitution of the society which it is not competent for the society under its existing constitution to make, a scheme for the purpose may be submitted for the approval of the Insurance Commissioners.

(3) Where such a scheme has been approved by the Insurance Commissioners, the Act or deed constituting the society shall have effect subject to the provisions of the scheme, but the Insurance Commissioners shall not approve any such scheme unless they are satisfied that the members of the society have been given an opportunity of voting by ballot thereon, and that the scheme makes proper provision for safeguarding existing rights and interests.

*Security to be given by approved societies.*

26.—(1) Every approved society and every society desirous of becom-

## National Insurance Act of 1911

ing an approved society shall give such security as the Insurance Commissioners may consider sufficient to provide against any malversation or misappropriation by officers of the society of any funds coming to the hands of the society under this Part of this Act, and in determining the amount of the security to be required the Commissioners shall have regard to the amount of the funds so coming into the hands of the society:

Provided that no security shall be required from any society which proves to the Insurance Commissioners that the only funds coming into the hands of the society under this Part of this Act are such funds as are required for reimbursing to the society sums previously expended by the society under this Part of this Act.

(2) In the case of an approved society with branches having insured persons among their members, security shall be given in respect of each such branch by the society.

(3) The Insurance Commissioners may from time to time vary the amount of security to be given or maintained by an approved society as may be thought proper, and, where security is given by way of deposit of securities, the society which made the deposit may, with the consent of the Insurance Commissioners, substitute other securities for the securities for the time being deposited.

(4) Any dividends or interest arising from securities deposited by an approved society under this section shall be paid to the society.

*Provisions as to approved societies.*

27.—(1) Every approved society shall, as respects the administration of the affairs of the society under this Part of this Act, make proper provision by rules to the satisfaction of the Insurance Commissioners for the government of the society, and if a society with branches—

- (a) for the government of the society and its branches;
- (b) for the determination of disputes arising between the society and any branch thereof, or between one such branch and another;
- (c) for the administration of benefits by the branches as respects insured persons who are members of such branches;
- (d) for the keeping of proper books of account by the branches in any case where separate accounts are usually kept by those branches;
- (e) for depriving of or suspending from the right of administering benefits under this Part of this Act any branch which is guilty of maladministration of those benefits, or is convicted of any offence under any Act, and for providing in such a case for their administration by the society or otherwise.

(2) Every approved society and every branch thereof shall comply with any regulations made by the Insurance Commissioners as to the place in which meetings are to be held, and those regulations may provide for

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National Insurance Act of 1911

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the use for such meetings, with or without payment, of any offices or other buildings under the control of a Government department (including offices or buildings occupied by or in connexion with a labour exchange) or belonging to or under the management of a local authority, but subject to the consent of the Government department or the local authority concerned.

(3) Where under any Act regulating the constitution of an approved society the rules of the society are required to be registered, any rules approved under this section by the Insurance Commissioners shall forthwith be registered, but until so registered shall have effect as if they had been duly registered.

*Successions, &c.*

28.—(1) No branch of an approved society having insured persons among its members shall be entitled to secede or withdraw from the society without the consent of the Insurance Commissioners; but such consent shall not be given unless the seceding or withdrawing branch complies with the conditions of approval requisite in the case of approved societies, and, on any such consent being given, the branch shall be subject in all respects to the provisions and requirements of this Part of this Act relating to approved societies:

Provided that such consent shall not be required if the branch makes provision to the satisfaction of the Insurance Commissioners for the transfer to other approved societies or to other branches of the society from which it is seceding or withdrawing of such of its members as are insured persons.

(2) An approved society or a branch thereof shall not be dissolved without the sanction of the Insurance Commissioners, and any such dissolution, so far as it affects members who are insured persons, shall be carried out in the prescribed manner.

(3) No branch of an approved society shall be expelled from the society, unless proper provision is made to the satisfaction of the Insurance Commissioners with respect to any members of the branch who are insured persons.

(4) This section shall have effect notwithstanding anything contained in any Act regulating the constitution of the society.

*Withdrawal of approval.*

29. Where an approved society or a branch of any approved society fails to comply with any of the provisions or requirements of this Part of this Act relating to approved societies, or where such a society or branch or the body of which the society forms a separate section is convicted of any offence under any Act regulating its constitution or under any other Act, the Insurance Commissioners may withdraw their approval, and

## National Insurance Act of 1911

thereupon the society shall cease to be an approved society and the Insurance Commissioners shall make such provision as they may consider necessary with respect to members of the society who are insured persons.

## MEMBERSHIP OF APPROVED SOCIETIES AND TRANSFER OF MEMBERS

*Admission of insured persons to membership in approved societies.*

30.—(1) Subject to the provisions of this Act, any insured person and any person entitled to become an insured person may apply to an approved society for membership therein.

(2) An approved society shall be entitled, in accordance with its rules, to admit or reject any such applicant, or to expel any of its members being insured persons: Provided that no such application shall be refused solely on the ground of the age of the applicant.

(3) This section shall come into operation on the passing of this Act.

*Transfer from one approved society to another.*

31.—(1) If an insured person, being a member of an approved society, ceases to be a member of that society, whether voluntarily or by expulsion, and becomes a member of another approved society, there shall be transferred to such other society in respect of such person a sum representing the liability under this Part of this Act of the first-mentioned society in respect of him (in this Act called "transfer value") calculated in accordance with tables to be prepared by the Insurance Commissioners:

Provided that such transfer value shall not be so transferred in any case where the first-mentioned society proves that the insured person voluntarily ceased to be a member of that society without the consent of the society, and that that consent was not unreasonably withheld.

(2) This section shall apply to transfers from one branch of an approved society to another branch of the same or any society in like manner as it applies to transfers from one society to another society.

*Transfers to foreign and colonial societies.*

32.—(1) If an insured person ceases to be permanently resident in the United Kingdom and becomes a member of any society or institution established in a British possession or foreign country, of a kind similar to an approved society, which is approved by the Insurance Commissioners, or of any branch established outside the United Kingdom of an approved society, the transfer value of such person, or, in the case of a deposit contributor, the amount standing to his credit in the Post Office, fund shall be paid to such society or institution or branch; but no such payment shall be made, unless the Insurance Commissioners are satisfied that the society, institution, or branch in question gives corresponding rights to any of its members becoming resident in the United Kingdom.

(2) Where an arrangement has been made with the Government of

## National Insurance Act of 1911

any British possession or with the Government of any foreign State, whereby insured persons may be transferred to a society or institution established in the British possession or foreign State similar to an approved society or the Post Office fund, and members of any such society or institution may be transferred to approved societies or to the Post Office fund, it shall be lawful for the Insurance Commissioners to make such arrangements as may be necessary for any such transfer as aforesaid, and for the determination of the amount to be transferred in any such case, and of the rights to which any person transferred is to be entitled; so, however, that nothing in this section shall affect the rights of a society under this Part of this Act to refuse applications for membership. •

*Transfer values of emigrants who remain members of approved societies.*

33. If a person who has for not less than five years been a member of an approved society for the purposes of this Part of this Act has ceased permanently to reside in the United Kingdom, and does not join such a society, branch, or institution as is in the last foregoing section mentioned, and the approved society is willing to permit him to remain a member of the society and to become entitled to benefits independently of this Act, the society may, subject to regulations by the Insurance Commissioners, transfer from the account of the society under this Part of this Act to the credit of the society independently of this Act such sum as would have been transferred to the Post Office fund had the member ceased to be a member of the society and become a deposit contributor, and so much of any reserve value which may have been credited to the society in respect of him as would in such a case have been cancelled shall be cancelled.

*Prohibition against double insurance.*

34. A person shall not be or attempt to become a member for the purposes of this Part of this Act of more than one approved society at the same time, or, being a deposit contributor, to become at the same time a member for the purposes of this Part of this Act of an approved society, but nothing in this Act shall prevent any person who is a member of an approved society under this Part of this Act becoming a member of the same or any other society independently of this Act, or prevent a deposit contributor becoming a member of any society independently of this Act, or affect the right of an approved society to reject or expel from membership any person not being an insured person, or the rights or liabilities of an approved society or of any member thereof arising otherwise than under this Part of this Act; and, subject to the provisions of this Part of this Act, all rules made by a society which becomes an approved society or any branch thereof shall remain and be of the same force and effect as though this Act had not been passed.

National Insurance Act of 1911

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## ACCOUNTS: VALUATIONS: SURPLUS AND DEFICITS

*Approved societies to keep proper accounts.*

35.—(1) Every approved society and every branch of an approved society must—

- (a) Keep its books and accounts under this Part of this Act separate from all other books and accounts of the society or branch, and in such form as may be prescribed by the Insurance Commissioners, and, when required, submit them to audit by auditors to be appointed by the Treasury;
- (b) Submit to have its assets and liability under this Part of this Act valued in accordance with the provisions of this Part of this Act;
- (c) In the event of a surplus or deficiency being shown upon any such valuation, comply with the provisions relating to surpluses and deficiencies herein-after contained;
- (d) Render such returns as the Insurance Commissioners may require.

(2) Regulations made under this section shall provide for a separate account being kept showing the amount expended on administration, and for limiting the amount which may be carried to that account out of the contributions under this Part of this Act, and for requiring any deficiency in such account (if not otherwise defrayed) to be met forthwith by a special levy.

(3) The provisions of this Part of this Act relating to accounts audit valuation and returns shall, as respects the transactions of any approved society or branch thereof under this Part of this Act, be substituted for such of the provisions of any Act regulating the constitution of the society or branch as deal with the like matters.

(4) In the case of a society or branch transacting other business besides that of insurance business under this Part of this Act, all funds and credits of the society or branch under this Part of this Act shall be as absolutely the security of the members for the purposes of this Part of this Act as if they belonged to a society or branch carrying on no other business than such insurance business, and shall not be liable for any contracts of the society or branch for which they would not have been liable had the business of the society or branch been only that of such insurance, and shall not be applied directly or indirectly for any purposes other than those of insurance business under this Part of this Act.

Where a separate section of a society has been established and such separate section is an approved society under this Part of this Act, the expression "society" in this subsection means the society of which the separate section has been established and not the separate section.

## National Insurance Act of 1911

*Valuations of approved societies.*

36.—(1) A valuation of the assets and liabilities arising under this Part of this Act of every approved society and of every branch of an approved society shall be made by a valuer, to be appointed by or with the approval of the Treasury, at the expiration of every three years dating from the commencement of this Act, or at such other times as the Insurance Commissioners appoint; the times so appointed may be at shorter or longer intervals than three years and at regular or irregular intervals, and may apply to all approved societies or any particular society or societies.

(2) Every such valuation shall be made on such basis as may be prescribed.

*Surplus.*

37.—(1) If upon any such valuation a surplus (certified by the valuer to be disposable) is found, the following provisions shall apply:—

(a) If the society is not a society with branches, the society may submit to the Insurance Commissioners a scheme for distributing out of such surplus any one or more additional benefits among insured persons who are members thereof for the purposes of this Part of this Act, and, upon any such scheme being sanctioned by the Insurance Commissioners, the society may distribute such additional benefit or benefits in accordance with the provisions thereof:

(b) If the society is a society with branches, any surplus in the central fund of the society, including any surplus transferred from the branches to the society under the provisions of this section, shall, subject to the provisions of the next succeeding section of this Act, be applied in the first instance towards making good any deficiency shown by any of its branches; and the society may distribute the balance of the surplus, after making good deficiencies as aforesaid, amongst such of its branches as have a surplus in proportion to the amounts of such surpluses, and the sum so apportioned to a branch shall be treated as an addition to the disposable surplus of that branch.

(c) If, on the valuation of a branch of an approved society, a surplus is shown in respect of such branch, there shall be transferred to the central body or other central authority of the society of which it is a branch one-third of the surplus, and the branch may, with the approval of the society, submit to the Insurance Commissioners a scheme for distributing out of the remaining two-thirds of such surplus, together with any such addition as aforesaid, any one or more additional benefits, and, upon any such scheme being sanctioned by the Insurance Commissioners, the branch may dis-

## National Insurance Act of 1911

tribute such additional benefit or benefits in accordance with the provisions thereof.

- (d) If, at any time after a scheme submitted by a society or branch has been so sanctioned as aforesaid, there is found to be a deficiency in the funds of the society or branch, no additional benefits shall be distributed under the scheme until such deficiency is extinguished and a surplus shown.

(2) A scheme made under this section may prescribe the conditions to be complied with as respects any additional benefit conferred by the scheme, and every such scheme shall, so far as practicable, provide for the reduction, suspension, or deprivation of the additional benefits conferred by the scheme in the case of members who are in arrears, and may make a corresponding reduction in the amount to which such members are to be deemed to be in arrears for the purpose of reckoning the rate of sickness benefit.

(3) No surplus and no part of any surplus shall be applied for the purpose of paying any benefits payable on death or any benefits other than one or more of the additional benefits specified in Part II of the Fourth Schedule to this Act.

*Deficit.*

38.—(1) If upon any such valuation a deficiency is found, the following provisions shall apply:—

- (a) If the deficiency is shown by a branch of an approved society, three-quarters, or, if the society thinks fit, the whole thereof, shall, in the first place, so far as possible, be made good out of any surplus available for that purpose in the hands of the central body or other central authority of the society:

Provided that the society may, if it is satisfied that the deficiency is due to any maladministration on the part of the branch in question, with the consent of the Insurance Commissioners, refuse to make good any part of the deficiency out of such surplus:

- (b) Subject as aforesaid, every deficiency shall be made good in accordance with a scheme for that purpose to be prepared by the society, or, in the case of a deficiency in a branch, by the branch subject to the approval of the society, and submitted to the Insurance Commissioners for their sanction such a scheme shall provide for making good the deficiency, within a period of three years from the date at which the valuation was made, in any one or more of the following ways:—

- (i) By a compulsory levy, by way of increase of the weekly rate of contributions, upon members of the society or branch being insured persons;



## National Insurance Act of 1911

- (ii) By reducing the rate of sickness benefit either for the whole period during which sickness benefit is payable or for any part thereof;
- (iii) By deferring the day as from which sickness benefit becomes payable;
- (iv) By reducing the period during which sickness benefit is payable;
- (v) By increasing the period which is required by this Part of this Act to elapse between two periods of disease or disablement to prevent the one being treated as a continuation of the other;
- (vi) By any other method approved by the Insurance Commissioners,

and, on the sanction of the Insurance Commissioners being given to the scheme, the society or branch shall proceed to make good the deficiency in accordance therewith:

- (c) Payment of the amount of any compulsory levy made in accordance with a scheme sanctioned under this section may be enforced in such manner as may be provided by the rules of the society or branch; and, where those rules so provide, it shall be lawful for the society or branch in the case of any member to enforce payment of the amount of the levy by giving notice in the prescribed manner to the employer of such member requiring him to pay the amount of the levy and, upon such notice being given, such amount shall be payable as if it were part of the contribution to be paid by the employer on behalf of the member, and all the provisions of this Part of this Act relating to the payment of such contributions and the recovery thereof from members shall apply accordingly:
- (d) If a member chargeable with a levy falls into arrears, his arrears shall reckon as though the total sum thereof, inclusive of the levy, consisted of the contributions payable by or in respect of him had no levy been made:
- (e) If within six months after the declaration of a deficiency, or, where an enquiry as to excessive sickness is pending under this Part of this Act, such longer period as the Insurance Commissioners determine, such scheme as aforesaid has not been submitted to and sanctioned by the Insurance Commissioners, or if at any time thereafter it appears to the Insurance Commissioners that the society or branch to which the scheme relates is not enforcing the provisions of the scheme, the Insurance Commissioners may take over the administration of the affairs of the society or branch under this Part of this Act, and shall, as soon as possible

National Insurance Act of 1911

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thereafter, take such steps as they may think necessary to make good the deficiency by any or all of the methods mentioned in paragraph (b) of this section, and for that purpose they shall be entitled to exercise all or any of the powers given to the society or branch by this Part of this Act:

- (f) The Insurance Commissioners after taking over the administration of the affairs of any society or branch shall within a reasonable time, not exceeding three years, make arrangements for the restoration to the society or branch of its powers of self-government or, failing that, for the transfer of the members of the society or branch, being insured persons, to other approved societies or branches or to the Post Office fund:
- (g) Any question or dispute arising between the Insurance Commissioners and the society or branch in respect of the amount of the deficiency, or as to the adequacy of any scheme proposed for making it good, shall be submitted to an independent valuer to be appointed by the Lord Chief Justice, and such valuer shall, subject to the provisions of this Act and of the regulations thereunder, act, so far as practicable, on his own knowledge and experience, and shall have power to determine how and by what parties the costs of proceedings, including his own remuneration, not exceeding such amount as the Treasury may prescribe, are to be defrayed, and his decision shall be final and conclusive:
- (h) A scheme made under this section shall not affect any person who becomes a member of the society or branch after the date as at which the valuation was made, or any member over seventy years of age:
- (i) Any insured person who, having been a member of the society or branch at the date as at which the valuation disclosing the deficiency was made, is transferred to another society or to another branch of the same or any other society before the deficiency is made good, shall be liable to any levy on reduction of benefits which has been or may be made in respect of such deficiency in like manner in all respects as if he had not ceased to be a member, and if the transfer took place before the scheme imposing the levy or reduction of benefits was sanctioned, such adjustment in the amount of any transfer value paid in respect of him shall be made as the circumstances require.

(2) Any member liable to a levy payable at intervals may relieve himself of the liability thereto, and a member subject to a diminution of benefits by virtue of any such scheme may, with the consent of the society or branch, acquire a right to undiminished benefits, on payment to the Insurance Commissioners of the capitalized value of the levy or diminu-

## National Insurance Act of 1911

tion of benefits, as the case may be, ascertained in the prescribed manner.

*Pooling arrangements in the case of small societies.*

39.—(1) Subject to the provisions of this section, all approved societies which at the date of any valuation have less than five thousand insured persons as members for the purposes of this Part of this Act shall, for the purposes of the valuation—

- (a) if they have joined an association formed under this section, be associated with the other societies in the same association; and
- (b) if they have not joined any such association, be grouped together according to the localities in which they carry on business.

(2) Any such societies may, with the consent of the Insurance Commissioners, form for the purposes of this section an association with the central financial committee, provided that the aggregate number of insured persons who are members of the associated societies is not less than five thousand, and the conditions on which a society shall be entitled or allowed to join, or having joined to secede from, an association, shall be such as may be prescribed.

(3) Any such society which has not joined any such association as aforesaid, and which carries on business in any county or county borough, shall, for the purposes of this section, be grouped with the other unassociated societies carrying on business in the same county or county borough.

(4) The provisions of this Part of this Act as to the application of surpluses of branches of societies with branches shall apply to such associated and grouped societies as if all the societies in any association or group were branches of a single society, subject to the following modifications:—

- (a) A reference to the central financial committee in the case of an association, and to the Insurance Committee for the county or county borough in the case of a group, shall be substituted for the reference to the central authority of the society;
- (b) The approval of the central financial committee or Insurance Committee shall not be required to any scheme prepared by an associated or grouped society for the distribution of any surplus.

(5) Where an associated or grouped society is a society with branches, the provisions of this Part of this Act relating to surpluses and deficiencies of societies with branches (except those requiring the approval of a society to a scheme prepared by a branch as to the distribution of a surplus or the making good of a deficiency) shall not apply to the society, but each branch shall, for the purposes of this section, be deemed to be a separate society.

(6) For the purposes of this section, a society shall be deemed to carry

## National Insurance Act of 1911

on business only in the county or county borough in which its registered office or other principal place of business is situate:

Provided that, where of the insured persons who are members of a grouped society at the date of any valuation more than one hundred or more than one-sixth reside in some county or county borough other than that in which the registered office or other principal place of business is situate, the proper proportion of any surplus or deficiency of the society shall, if application for the purpose is made by any of the Insurance Committees concerned, be apportioned to the Insurance Committee of that other county or county borough, such proportion to be determined, in default of agreement between the Insurance Committees concerned, by the Insurance Commissioners.

(7) The Insurance Commissioners may exempt from this section any society consisting of persons entitled to rights in a superannuation or other provident fund established for the benefit of persons employed by one or more employers, if the employer, in addition to the contributions payable by him under this Part of this Act, is responsible for the solvency of the fund, or for the benefits payable thereout, or is liable to pay a substantial part of, or to make substantial contributions to, or substantially to supplement the benefits payable out of the fund, and this section shall not apply to any society to which such an exemption has been granted.

(8) Except so far as relates to the power of refusing to make good any part of a deficiency due to maladministration on the part of any society, nothing in this section shall be construed as conferring on any central financial committee or Insurance Committee any powers of control over the administration of associated or grouped societies.

*Special provisions with regard to societies with branches.*

40.—(1) Where a society with branches is so organized that the branches in different geographical areas are grouped together for the purposes of this section, the branches in any such area may, if and to such extent as the rules of the society so provide, and if the number of members of the branches being insured persons in the area exceeds five thousand, be treated for the purposes of the provisions of this Part of this Act relating to valuations, surpluses, and deficiencies as if they formed a separate society.

(2) The rules of any society with branches may provide for the branches reinsuring with the society their liabilities in respect of any of the benefits under this Part of this Act, or, if the society is so organized as aforesaid, for such reinsurance either with the society or with the group.

(3) Where a society with branches has among its members insured persons who are not members of any branch, and the benefits of such members are administered by the society itself, such members shall be

## National Insurance Act of 1911

treated for the purposes of this Part of this Act relating to valuations, surpluses, and deficiencies as if they formed a separate branch.

*Power to separate men's and women's funds.*

41. Where an approved society, not being a society with branches, has amongst its members both men and women, and the rules of the society so provide, the provisions of this Part of this Act with respect to valuations, surpluses, and deficiencies shall apply to the society as if it were a society consisting of two branches, the one comprising the male members and the other comprising the female members.

## DEPOSIT INSURANCE

*Provisions as to deposit contributors.*

42. Until the first day of January nineteen hundred and fifteen, the following provisions shall apply in the case of insured persons (in this Act referred to as deposit contributors) who have not joined an approved society within the prescribed time, or who, having been members of an approved society, have been expelled or have resigned therefrom and have not, within the prescribed time, joined another approved society:—

- (a) Contributions by or in respect of a deposit contributor shall be credited to a special fund to be called the Post Office fund:
- (b) The sums required for the payment of any sickness disablement, or maternity benefit payable to a deposit contributor, except so far as they are payable out of moneys provided by Parliament, shall be paid out of the money standing to his credit in the Post Office fund, and his right to benefits under this Part of this Act shall be suspended on the sums standing to his credit in that fund being exhausted, except that his right to medical benefit and sanatorium benefit shall continue until the expiration of the then current year, and that the Insurance Committee, if it has funds available for the purpose and thinks fit so to do, may allow him to continue to receive medical benefit or sanatorium benefit or both such benefits after the expiration of such year:
- (c) Such sum as may be prescribed shall in each year be payable in respect of each deposit contributor towards the expenses incurred by the Insurance Committee in the administration of benefits:
- (d) Such sum as the Insurance Committee may, with the consent of the Insurance Commissioners, determine shall in each year be payable in respect of each deposit contributor for the purposes of the cost of medical benefit:
- (e) The sums payable in respect of a deposit contributor for the purposes of medical benefit and sanatorium benefit, and towards the expenses of administration, shall, except so far as they are payable

## National Insurance Act of 1911

out of moneys provided by Parliament, be deducted at the commencement of each year from the amount standing to his credit in the Post Office fund, and, if at the commencement of any year the amount so standing to his credit is insufficient to provide such sums, he shall not, unless the Insurance Committee consents, and except subject to such conditions as that committee may impose, be entitled to any benefits during that year:

- (f) Upon the death of a deposit contributor, four-sevenths (or in the case of a woman one-half) of the amount standing to his credit in the Post Office fund shall be paid to his nominee or, in default of a nomination, to the person entitled to receive the sum as if it were money payable on the death of a member of a registered friendly society, and the balance thereof shall be forfeited, and sections fifty-six to sixty-one of the Friendly Societies Act, 1896, as amended by any subsequent enactment, shall, subject to the prescribed adaptations, apply accordingly:
- (g) Where a deposit contributor proves to the satisfaction of the Insurance Committee that he has permanently ceased to reside in the United Kingdom, four-sevenths (or in the case of a woman one-half) of the amount standing to his credit in the Post Office fund may be paid to him.

*Transfer from approved society to deposit insurance and vice versa.*

43.—(1) If an insured person, being a member of an approved society, ceases to be a member of that society, whether voluntarily or by expulsion, and fails to become within the prescribed time a member of another approved society, then—

- (a) if he becomes a deposit contributor, his transfer value shall be carried to his credit in the Post Office fund: Provided that, if a reserve value has been credited to the society in respect of him, such part of that reserve value as is still outstanding (or if the amount so outstanding exceeds the transfer value such part of the reserve value as is equal to the transfer value) shall be cancelled, and the amount, if any, by which the transfer value exceeds the amount so cancelled shall be carried to the credit of the deposit contributor;
  - (b) if he does not become a deposit contributor, his transfer value shall be carried to such account and dealt with in such manner as may be prescribed.
- (2) If an insured person who is a deposit contributor subsequently becomes a member of an approved society for the purposes of this Part of this Act, there shall be transferred to the society the amount standing to his credit in the Post Office fund:

## National Insurance Act of 1911

Provided that—

- (a) if that amount exceeds the value of the contributions paid by or in respect of him estimated on the assumption that he had been a member of an approved society since his entry into insurance, the excess shall not be transferred to the society but shall be carried to the credit of the Post Office fund;
- (b) if that amount is less than such value, the insured person shall be treated as being in arrear to the amount of the deficiency.

## PROVISIONS AS TO SPECIAL CLASSES OF INSURED PERSONS

*Special provisions with respect to married women.*

44.—(1) Where a woman who has before marriage been an insured person marries, she shall be suspended from receiving the ordinary benefits under this Part of this Act until the death of her husband, and, if she is a member of an approved society, one-third of her transfer value shall be carried to a separate account called the married women's suspense account, but, if at any time after the death of her husband she becomes an employed contributor, the period between her marriage and the expiration of one month from the death of her husband shall be disregarded for the purpose of reckoning arrears, and there shall be transferred from the married women's suspense account to the society of which she is a member the proper reserve value calculated according to tables to be prepared by the Insurance Commissioners:

Provided that, where a woman who has been employed within the meaning of this Part of this Act before marriage, proves that she continues to be so employed after marriage, she shall not be so suspended so long as she continues to be so employed, and that, where a married woman so suspended from the ordinary benefits becomes employed within the meaning of this Part of this Act before the death of her husband, contributions shall thereupon again become payable in respect of her, and she shall cease to be suspended from receiving the ordinary benefits, but, subject to regulations made by the Insurance Commissioners, she shall, for the purposes of those benefits, be treated as if she had not previously been an insured person.

(2) Where a married woman being a member of an approved society is so suspended from the ordinary benefits as aforesaid, she may, if she so elects within one month after such suspension, or, subject to the consent of the society, after the expiration of that month, and notwithstanding that she is not engaged in any regular occupation, become whilst so suspended a voluntary contributor, subject to the following modifications, but not otherwise:—

- (a) The rate of contributions payable by her shall be three-pence a week;

National Insurance Act of 1911

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- (b) The benefits to which she shall be entitled shall be—
- (i) medical benefit; and
  - (ii) sickness benefit and disablement benefit at the rates and subject to the conditions specified in Table D. of Part I. of the Fourth Schedule to this Act;
- (c) No part of her contributions shall be retained by the Insurance Commissioners for the purpose of discharging their liabilities to approved societies in respect of the reserve values created under this Act:

Provided that, where a married woman elects not to become such a voluntary contributor, she shall be entitled to have a sum equal to the remaining two-thirds of her transfer value applied in accordance with regulations of the Insurance Commissioners towards the payment of any of the benefits specified in Part III. of the Fourth Schedule to this Act until the same is exhausted, except that, where a reserve value was credited to the society in respect of such woman at the date of her entrance into insurance, so much of such sum as aforesaid as may be prescribed shall not be so applied but shall be written off the amount of the reserve values credited to the society.

(3) Where the husband of a married woman who has been so suspended from ordinary benefits as aforesaid and who is a member of an approved society dies, she may, if she is qualified to become a voluntary contributor, and elects to do so within one month after the death of her husband, become an ordinary voluntary contributor paying contributions at the rate which would have been applicable to the case had she become such a contributor at the date of her entry into insurance.

Provided that she may, whether or not so qualified, if she so elects within one month after the death of her husband, continue to be or become a voluntary contributor on the same terms and subject to the same conditions as above provided as respects married women.

In either such case there shall be transferred from the married women's suspense account to the society the proper reserve value calculated as aforesaid.

(4) Where a married woman who was at the date of her marriage a deposit contributor is by virtue of this section suspended from the ordinary benefits under this Part of this Act, two-thirds of the sum standing to her credit in the Post Office fund shall be applied in accordance with the regulations of the Insurance Commissioners towards the payment of any of the benefits specified in Part III. of the Fourth Schedule to this Act until the same is exhausted.

(5) Where a woman who was a married woman at the commencement of this Act at any time subsequently either before or within one year after the death of her husband becomes an employed contributor and a member



National Insurance Act of 1911

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of an approved society, she shall be entitled to full benefits, notwithstanding that at the time of so becoming she is of the age of seventeen or upwards.

(6) Where any arrears of contributions have accrued due in respect of a married woman during coverture such arrears shall, on the death of her husband, be disregarded and she shall be thenceforth entitled to benefits as if such arrears had never accrued due.

(7) Except as provided by this section, a married woman shall not be entitled to become a voluntary contributor, and, if a woman is before marriage a voluntary contributor, she shall on marriage not be entitled to continue to be such a contributor.

(8) If a woman, whilst a voluntary contributor at such reduced rates of benefit as are provided by this section, becomes employed within the meaning of this Part of this Act, she shall be entitled to a certificate (to be granted in manner herein-before provided) exempting her from liability to become an employed contributor so, however, that such exemption shall not exempt the employer from his liability to pay contributions in respect of her, or deprive him of his right to recover such part of those contributions as is payable on her behalf, but of each weekly contribution so paid by the employer threepence shall be treated as her contribution as a voluntary contributor and the balance shall be applied for her benefit in such manner as the society may determine.

(9) If at any time the married women's suspense account is insufficient to meet the liabilities imposed on it by this section, the deficiency shall be made good out of the sums retained by the Insurance Commissioners for discharging their liabilities in respect of the reserve values created by this Act.

(10) Transfer value for the purposes of this section shall be calculated in such manner as the Insurance Commissioners may prescribe.

(11) Where a woman is a member of an approved society at the time when she is entitled to exercise an option under this section, it shall be the duty of the society to give her full information as to the nature of her rights.

(12) Where a deficiency has been found in respect of the society or branch of which a woman is a member at a valuation previous to the time when she became suspended from ordinary benefits under this Part of this Act, and that deficiency has not been made good at the time of her marriage, or where a woman is in arrears at that time, such adjustments in the sums transferred to the married women's suspense account, and in the balance of her transfer value, and in the rates of benefit to which she is entitled under this section, shall be made as the Insurance Commissioners may prescribe.

(13) Save as aforesaid, the provisions of this Part of this Act shall

## National Insurance Act of 1911

apply to a woman who has been married, both during and after coverture, in like manner as if she had never been married.

(14) This section shall apply in the case of a woman whose marriage has been dissolved or annulled, or who has, for a period of not less than two years, been actually separated from or deserted by her husband, as if her husband had died at the date at which such dissolution or annulment took effect, or, as the case may require, at the expiration of such period of two years.

*Special provisions as to aliens.*

45.—(1) This Part of this Act shall apply to persons of the age of seventeen or upwards at the date of entry into insurance who are not British subjects, subject to the following modifications:—

- (a) No such person shall be qualified to become a member of an approved society for the purposes of this Part of this Act, except upon the terms and subject to the conditions hereinafter mentioned;
  - (b) No part of the benefits to which such persons may become entitled shall be paid out of moneys provided by Parliament;
  - (c) The rate of sickness, disablement, and maternity benefit shall, as respects a deposit contributor, be reduced, in the case of men, to seven-ninths, or in the case of women to three-quarters, of the rate to which they would otherwise be entitled under this Part of this Act;
  - (d) No part of the sums payable in respect of such persons for medical benefit and sanatorium benefit or towards the expenses of administration of benefits shall, in the case of such persons, be paid out of moneys provided by Parliament.
- (2) Where such a person becomes a member of an approved society the following provisions shall have effect:—
- (i) The contributions payable by or in respect of such person shall be credited to the society;
  - (ii) The society shall in each year pay to the Insurance Committee the whole of the sums payable in respect of such person for medical benefit and sanatorium benefit;
  - (iii) The rate and conditions of sickness benefit, and disablement benefit, and maternity benefit shall be such as may be determined by the society;
  - (iv) Such person shall not be deemed to have joined an approved society for the purposes of the provisions of this Part of this Act relating to reserve values, and no part of the contributions of such person shall be retained by the Insurance Commissioners towards the discharge of their liabilities in respect of reserve values.

(3) A woman who, having been a British subject before marriage, has ceased to be a British subject by reason of marriage with a person not being a British subject, shall not be subject to the provisions of this section if her husband is dead, or the marriage has been dissolved or annulled, or she has for a period of not less than two years been actually separated from or deserted by her husband.

(4) This section shall not apply to any person who, on the fourth day of May nineteen hundred and eleven, was a member of a society which, or a separate section of which, becomes an approved society, and had then been resident in the United Kingdom for five years or upwards, or to any person who is transferred to an approved society or the Post Office fund in pursuance of an arrangement with the Government of any foreign State.

*Special provisions with regard to persons in the naval and military service of the Crown, 28 & 29 Vict., c. 73.*

46.—(1) For the purpose of providing seamen, marines, and soldiers with such benefits during their term of service and after their return to civil life as are hereinafter in this section mentioned, there shall be deducted from the pay of every seaman and marine within the meaning of the Naval and Marine Pay and Pensions Act, 1865, and of every soldier of the regular forces (other than soldiers of His Majesty's Indian Forces, the Royal Malta Artillery, and native soldiers of any regiment raised outside the United Kingdom), the sum of one penny halfpenny a week, and there shall be contributed by the Admiralty and the Army Council respectively, out of moneys provided by Parliament for navy and army services, in respect of every such seaman, marine, and soldier who has joined an approved society in the manner hereafter mentioned, the sum of one penny halfpenny per week, and, in respect of every other such seaman, marine, and soldier, such sum per week as may be prescribed:

Provided that no such deduction shall be made from the pay of a seaman, marine, or soldier who has completed the period of his first engagement and has re-engaged for pensions unless he so elects within the prescribed time, and that no contribution shall be made by the Admiralty or Army Council in respect of any week in respect of which such a deduction is not made.

(2) A seaman, marine, or soldier—

- (a) who was at the date of his entry or enlistment an insured person and had joined and was at that date a member of an approved society; or
- (b) who within six months from the date of his entry or enlistment, or, in the case of a seaman, marine, or soldier serving at the com-

## National Insurance Act of 1911

mencement of this Act, within six months after the commencement of this Act, or within such longer period as may be prescribed, joins an approved society for the purposes of this Part of this Act; shall, for the purposes of this Part of this Act, be treated as if he were an employed contributor, subject, until his discharge, to the following modifications:—

- (i) The employed rate shall be three pence, and the deductions made from his pay and the contributions made in respect of him by the Admiralty or Army Council shall be treated as the contributions paid in respect of him;
  - (ii) He shall not be entitled to medical benefit, sanatorium benefit, sickness benefit, or disablement benefit;
  - (iii) Maternity benefit shall be payable, notwithstanding that both he and his wife are resident outside the United Kingdom at the date of the confinement, and the society may arrange with the Admiralty or Army Council for the administration of the benefit through the Admiralty or Army Council;
  - (iv) The sum to be retained out of each weekly contribution by the Insurance Commissioners towards the discharge of their liabilities in respect of reserve values shall be one penny, and the remaining five-ninths of a penny shall be paid out of the Navy and Army Insurance Fund hereinafter constituted.
- (3) With respect to seamen, marines, and soldiers who have not joined an approved society as aforesaid, the following provisions shall have effect:—
- (a) The sums so deducted and the contributions so made as aforesaid in respect of such men shall be paid into the National Health Insurance Fund, and out of such sums there shall be retained by the Insurance Commissioners towards discharging their liabilities in respect of the reserve values created under this Part of this Act the like amount as if such men were members of approved societies, and the balance shall be credited to a special fund to be called the Navy and Army Insurance Fund:
  - (b) There shall also be paid into the Navy and Army Insurance Fund in each year out of moneys provided by Parliament a sum equal to two-ninths of the amount, calculated in the prescribed manner, which would have been payable in that year in respect of medical, sanatorium, sickness, and disablement benefits (including expenses of administration) had all seamen, marines, and soldiers from whose pay deductions are made under this section been members of approved societies and entitled to such benefits as employed contributors:
  - (c) The weekly contributions to be made by the Admiralty and Army

## National Insurance Act of 1911

- Council in respect of such men shall be such as may from time to time be required to keep the Navy and Army Insurance Fund solvent:
- (d) If any such man was at the date of his entry or enlistment a deposit contributor, he shall, for the purpose of dealings with the sum standing to his credit in the Post Office fund, be treated as if the Navy and Army Insurance Fund had been an approved society, and he had at the date of his entry or enlistment become a member of that society:
  - (e) In the case of a seaman, marine, or soldier serving at the commencement of this Act, there shall be credited to the Navy and Army Insurance Fund such reserve value as would have been credited to an approved society had he at that date become a member of the society as an employed contributor: Provided that no such reserve value shall be credited to that fund if at the date aforesaid he had completed the period of his first engagement and had re-engaged for pension, unless he elects to have deductions made from his pay, or unless, not having so elected, he becomes on discharge entitled to benefits payable out of that fund as hereinafter mentioned:
  - (f) Every such man shall, until discharged, be entitled to maternity benefit payable out of the Navy and Army Insurance Fund, and shall be entitled to such benefit, notwithstanding that both he and his wife are at the date of the confinement resident outside the United Kingdom, and the benefit shall be administered by the Admiralty and Army Council either directly or through Insurance Committees:
  - (g) On the discharge of a seaman, marine, or soldier, from whose pay deductions have been made and continue to be made up to the date of his discharge, there shall be debited to the Navy and Army Insurance Fund, and, if he becomes a member of an approved society within the prescribed time from his discharge, there shall be credited to that society, or, if he does not become a member of such a society within the prescribed time from his discharge, there shall, unless he becomes entitled to benefits out of the Navy and Army Insurance Fund as hereinafter mentioned, be carried to his credit in the Post Office fund the transfer value which would have been payable in respect of him had he been a member of an approved society throughout his period of service, or, in the case of a man serving at the date of the commencement of this Act, since that date, and, if he becomes a deposit contributor, so much of the reserve value, if any, credited to the Navy and Army Insurance Fund in respect of him shall be cancelled as would have been can-

## National Insurance Act of 1911

celled had he been transferred from an approved society to the Post Office fund;

- (h) A man discharged from service as a seaman, marine, or soldier who proves that the state of his health is such that he cannot obtain admission to an approved society may, if he so elects, on making application to the Insurance Commissioners in the prescribed manner within three months of his discharge, or such longer time as may be prescribed, become, subject to regulations made by the Insurance Commissioners after consultation with the Admiralty and Army Council, entitled to benefits (other than additional benefits) provided under this Part of this Act as the full rate, the cost of which benefits shall be payable out of the Navy and Army Insurance Fund, and such benefits shall be administered by Insurance Committees or otherwise in such manner as may be prescribed by such regulations as aforesaid and any contributions paid under this Part of this Act by or in respect of him shall be paid into that fund:

Provided that—

- (i) no deductions from benefits shall be made on account of any pension to which a man may be entitled;
  - (ii) the rate of sickness benefit shall be reduced, in the case of a man who entered into insurance when of the age of seventeen or upwards or who is in arrears, to the like extent as it would be reduced had he been an employed contributor and a member of an approved society who entered into insurance at the like age or who is in arrears to the like extent, so however that the rate of sickness benefit shall in no case be reduced below five shillings a week;
  - (iii) there shall in each year be repaid to the Navy and Army Insurance Fund, out of moneys provided by Parliament, a sum equal to two-ninths of the amount expended out of the fund on such benefits as aforesaid, including the expenses of administration;
  - (iv) if a man who is so entitled to benefits payable out of the Navy and Army Insurance Fund at any time becomes a member of an approved society for the purposes of this Part of this Act, he shall cease to be entitled to benefits payable out of that fund and there shall be debited to that fund and credited to such society the transfer value which would have been so debited and credited if he had been at that time transferred from one approved society to another approved society.
- (4) In the application of this Part of this Act to a man who is or has been a seaman, marine, or soldier, and to whom this section applies—

## National Insurance Act of 1911

- (i) the date of his entry or enlistment as a seaman, marine, or soldier, or, if he was serving at the commencement of this Act, the date of that commencement, shall, unless he was an insured person at the date of his entry or enlistment, be treated as the date of his entry into insurance;
- (ii) deductions from pay, with the corresponding contributions made by the Admiralty and Army Council, shall be treated as payments of contributions at the employed rate for the purpose of reckoning the number of contributions made in respect of him, arrears, and transfer value, and for the purpose of qualifications for becoming a voluntary contributor;
- (iii) a seaman, marine, or soldier during his term of service shall, if he has joined an approved society as aforesaid before his entry or enlistment, be deemed to reside in that part of the United Kingdom in which he resided immediately before his entry or enlistment, or, if after his entry or enlistment, in the part of the United Kingdom in which the registered office or other principal place of business of the society or branch which he has joined is situate, and in any other case in England, and all persons entitled to benefits payable out of the Navy and Army Insurance Fund shall be deemed to reside in England.

(5) Discharge shall, in the case of a seaman, marine, or soldier who on the completion of any term of service is transferred to a reserve, include such transfer.

(6) This section shall not apply to a seaman, marine, or soldier who entered or enlisted before the age of sixteen until he attains that age, and on attaining that age shall apply to him as if he had entered or enlisted at the time when he attained that age.

(7) The foregoing provisions of this section shall, subject to such adaptations and modifications as may be prescribed, apply to men belonging to the Naval Reserves when employed on service during war or any emergency, and to men of the Army Reserve when called out on permanent service, and to men of the Territorial Force when called out on embodiment, but, except as aforesaid, shall not apply to any such men.

(8) Where a man of the Naval Reserves, the Army Reserve, or the Territorial Force is being trained and is in receipt of pay out of the moneys provided by Parliament for Navy or Army services, he shall, for the purposes of this Part of this Act, be deemed, whilst so training, to be employed within the meaning of this Part of this Act and to be in the sole employment of the Crown. Provided that this subsection shall not apply to a man who was not immediately before the training an insured person,

## National Insurance Act of 1911

except in such cases and under such circumstances as may be specified in a special order made by the Insurance Commissioners.

*Special provisions where employer liable to pay wages during sickness.*

47.—(1) The Insurance Commissioners shall from time to time make special orders specifying any classes of employment in which a custom or practice is shown to their satisfaction to prevail according to which the persons employed receive full remuneration during periods of disease or disablement, or any part thereof, and, where the custom or practice is confined to certain localities, the order shall also specify the localities in which the custom prevails, and, subject to the provisions of this section, the order may contain such incidental, supplemental, and consequential provisions as appear necessary for adapting the other provisions of this Part of this Act to cases under this section.

(2) It shall be lawful for any employer who employs persons in any class of employment specified in any such order, within a locality (if the custom is confined to certain localities) so specified, to give to the Insurance Commissioners the prescribed notice, and thereupon the employer shall, as respects all such persons, be subject to the liabilities, and this Part of this Act shall apply in respect of all such persons, subject to the modifications, hereinafter mentioned.

(3) The employer shall be liable to pay full remuneration to every such person during any period or periods not exceeding six weeks in the aggregate in any one year during which such person may be suffering from any disease or disablement commencing while such person is in his employment, notwithstanding that such person may have left his employment before the expiration of that time:

Provided that, if any such person is engaged for a term of not less than six months certain, the employer shall be liable to pay full remuneration during any period of disease or disablement lasting less than six weeks, and for the first six weeks of any period of disease or disablement lasting more than six weeks, notwithstanding that the aggregate exceeds six weeks, but, where any such period extends beyond the term of the engagement, the employer shall not be liable to make any payment in respect of any part thereof after the expiration of such term.

(4) This Part of this Act shall apply in respect of persons so employed as aforesaid, subject to the following modifications:—

(a) Sickness benefit shall not be payable in respect of any period during which full remuneration is payable by the employer under this section, but, for the purpose of calculating the rate and duration thereof, shall be deemed to have been paid for six weeks before the date as from which it becomes actually payable:



## National Insurance Act of 1911

- (b) The employed rate shall be reduced by two pence (or, where the employed contributor is a woman, one penny halfpenny):
  - (c) The weekly contributions payable by the employer shall be reduced by one penny (or, where the employed contributor is a woman, one half-penny), and the weekly contributions payable by the employed contributor shall be reduced by one penny:
  - (d) There shall be credited to the approved society of which any such person is a member, or, if he is a deposit contributor, to his account in the Post Office fund, the difference between the amount of contributions at such reduced rate actually paid in respect of him and the amount which would have been paid if those contributions had been at the full rate, and the amount of that difference shall be treated as having been expended on sickness benefit, and the proper proportion thereof shall accordingly be paid out of moneys provided by Parliament:
  - (e) Contributions shall not be payable in respect of any period of disease or disablement during which full remuneration is payable under this section if the prescribed notice has been given:
  - (f) The rules of an approved society or Insurance Committee as to notices and proof of disease and disablement may extend to periods of disease and disablement during which full remuneration is payable under this section.
- (5) Where a person on ceasing to be so employed becomes temporarily unemployed, paragraphs (b) and (d) of the last foregoing subsection shall continue to apply in respect of him, and sickness benefit shall not be payable in respect of the first six weeks of any period of disease or disablement commencing after he ceased to be so employed, but, for the purpose of calculating the rate and duration thereof, shall be deemed to have been paid during those six weeks, and notwithstanding anything in this Part of this Act a disease or disablement shall not, for the purposes of sickness benefit, be treated as a continuation of a previous disease or disablement unless the medical practitioner attending such person certifies that it in fact is so.
- (6) Where such a person as aforesaid ceases to be employed within the meaning of this Part of this Act, and is entitled to become a voluntary contributor paying contributions at the employed rate, paragraphs (b) and (d) of subsection (4) shall, if he becomes a voluntary contributor, continue to apply in respect of him, and sickness benefit shall not be payable in respect of the first six weeks of any period of disease or disablement commencing after he became a voluntary contributor, but, for the purpose of calculating the rate and duration thereof, shall be deemed to have been paid during those six weeks, and, notwithstanding anything in this

## National Insurance Act of 1911

Part of this Act, a disease or disablement shall not, for the purposes of sickness benefit, be treated as a continuation of a previous disease or disablement unless the medical practitioner attending such person certifies that it in fact is so:

Provided that, if any such person at any time wishes to become an ordinary voluntary contributor, he may become such after the payment of twenty-six weekly contributions at the full rate, or, if the society of which he is a member consents, after the payment of such less number of such contributions as the society may appoint.

(7) Where any employers wish to avail themselves of the provisions of this section as respects the persons employed by them in a class of employment, or in a locality, in which no such custom or practice as aforesaid exists, they may apply to the Insurance Commissioners, and the Commissioners, if, after ascertaining the views of the persons so employed, they think fit, may make a special order extending the provisions of this section as respects the applicants to the class of employment or locality mentioned in the application as if it were a class of employment or locality in which such a custom or practice as aforesaid prevailed.

(8) Any question as to whether an employer is entitled to avail himself of the provisions of this section as respects any persons employed by him shall be determined by the Insurance Committee, subject to appeal to the Insurance Commissioners.

(9) The payment of contributions purporting to be at the reduced rate authorized by this section as respects any persons employed by an employer in any class of employment, shall be conclusive evidence that he is, as respects those persons and all other persons employed by him in the same class of employment in the same locality, under the liability imposed by this section.

(10) An employer who has given such notice as aforesaid may, by giving three months' previous notice to the Insurance Committee, withdraw his notice as from the commencement of the next calendar year, and in such case, as from that date, this section shall cease to apply in respect of the persons employed by him in the class of employment to which the notice of withdrawal relates.

(11) None of the provisions of this section shall apply as respects any person employed at a rate of remuneration which is less than ten shillings a week.

(12) Nothing in this section shall relieve any employer from any legal liability to pay wages during sickness to any person employed by him in accordance with any established custom.

*Special provisions as to the mercantile marine.*

48.—In the application of this Part of this Act to masters, seamen, and

## National Insurance Act of 1911

apprentices to the sea service and the sea fishing service, the following provisions shall have effect:—

- (1) Neither sickness benefit nor disablement benefit shall be paid to a master, seaman, or apprentice suffering from any disease or disablement in respect of any period during which the owner of the ship is under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expense of the necessary surgical and medical advice and attendance and medicine, and of his maintenance, but, for the purpose of calculating the rate and duration of sickness benefit, such benefit shall be deemed to have been paid from the commencement of the disease or disablement until the determination of such liability as aforesaid, and he shall not be entitled to medical benefit during such period:
- (2) In the case of masters, seamen, and apprentices serving on foreign-going ships or ships engaged in regular trade on foreign stations, the employed rate and the employer's contributions shall each be reduced by one penny a week, and every four weekly contributions paid in any calendar year by a master, seaman, or apprentice whilst serving on such a ship shall, for the purposes of determining the number of contributions to be paid by him in that year and for the purposes of calculating arrears, be treated as five such contributions:

57 & 58 Vict.  
c. 60.

Provided that—

- (a) nothing in this provision shall affect the number of employer's contributions to be paid in respect of such a master, seaman, or apprentice, but no employer's contributions paid in respect of any week in respect of which no contribution is payable by the master, seaman, or apprentice shall be taken into account in reckoning the amount of his arrears:
- (b) there shall be credited to the approved society of which the master, seaman, or apprentice is a member, or, if he is a deposit contributor, to his account in the Post Office fund, a sum equal to two-fifths of the amount of the contributions actually paid in respect of him, and an equal sum shall be treated as having been expended on sickness benefit, and the proper proportion thereof shall accordingly be paid out of moneys provided by Parliament:
- (3) A master, seaman, or apprentice who is neither domiciled nor has a place of residence in the United Kingdom shall not be deemed to be employed within the meaning of this Part of this Act, but the employer shall be liable to pay the same contributions in respect of him as would otherwise have been payable by him as em-

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National Insurance Act of 1911

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ployer's contributions, except in cases where the ship is engaged in regular trade on foreign stations:

- (4) The Board of Trade shall, as soon as may be after the passing of this Act, cause a society to be formed, to be called the Seamen's National Insurance Society, of which any masters, seamen, and apprentices to the sea service and the sea fishing service who are employed within the meaning of this Part of this Act shall be entitled to become members, but nothing in this section shall prevent any such person joining another approved society instead of the society so formed:
- (5) The affairs of the Seamen's National Insurance Society shall be managed by a committee constituted in accordance with a scheme to be prepared by the Board of Trade with the approval of the Insurance Commissioners, comprising representatives of the Board of Trade, of shipowners, and of members of the society in equal proportions, and the society shall, notwithstanding anything in this Part of this Act, become an approved society:
- (6) All contributions paid by employers in respect of masters, seamen, or apprentices who are neither domiciled nor have a place of residence in the United Kingdom, and consequently deemed not to be employed within the meaning of this Part of this Act, shall be credited to the Seamen's National Insurance Society:
- (7) In addition to medical, sanatorium, sickness, disablement, and maternity benefits, members of the Seamen's National Insurance Society shall be entitled to such other benefits as may be provided under a scheme to be prepared by the committee of management, with the approval of the Board of Trade and the Insurance Commissioners, and such other benefits shall include pensions for masters and seamen with long sea service, and the scheme may provide for preference being given to masters and seamen who have served in foreign-going ships or ships engaged in foreign trade over those who have served in the coasting and home trade ships, and such preference may be proportionate to the length of time spent in the first-mentioned service:

Provided that—

- (a) The scheme shall provide for making a proper proportion of the sums credited to the Seamen's National Insurance Society under the last foregoing subsection applicable towards the payment of pensions or superannuation allowances granted by other approved societies to members with such sea service that, had they been members of the Seamen's National Insurance Society, they would have been entitled to pensions under the scheme; and

## National Insurance Act of 1911

- (b) in the case of the transfer of a member of the society to another approved society, the transfer value payable in respect of him shall be calculated with reference to the liabilities of the society for benefits other than such pensions as aforesaid:
- (8) The rules of the Seamen's National Insurance Society shall provide for allowing a member who leaves the sea service and is unable to obtain admission to another approved society on account of the state of his health to continue a member of the Seamen's National Insurance Society for the purposes of this Part of this Act, and the rules of that society may provide that a member of the society who has fulfilled the conditions entitling him to such pension as aforesaid shall not be deprived of his right to the pension by reason only that he has ceased to be a member of the society at the time when the pension first becomes payable or ceases so to be at any subsequent time:
- (9) Where a master, seaman, or apprentice is at the commencement of this Act a member of a society which becomes an approved society he may, if that society and the Seamen's National Insurance Society so agree, continue to be a member of the first-mentioned society for the purposes of benefits under this Part of this Act other than pension, and become a member of the last-mentioned society for the purposes of pension only, and in such case the balance of the contributions payable in respect of him (after deducting the sums to be retained by the Insurance Commissioners towards discharging their liabilities in respect of reserve values) shall be divided between the two societies in such proportion as they may agree:
- (10) Expressions in this section have the same meaning as in the Merchant Shipping Acts, 1894 to 1907, but the expressions "foreign-going ships" and "home trade" ships include ships engaged in the sea fishing service, and the expression "ship engaged in regular trade on foreign stations" means a ship engaged regularly in trade between ports outside the British Islands when trading between such ports, but, for the purposes of this provision, a ship shall not be deemed not to be engaged in such a trade by reason only that she puts into a port in the United Kingdom for the purpose of survey or repair:
- (11) The provisions of this Part of this Act affecting the employed rate and the rates of contributions of employers and contributors in Ireland, and depriving insured persons in Ireland of medical benefit, shall not apply to any such master, seaman, or apprentice, unless he has a permanent place of residence in Ireland and is not a member of the Seamen's National Insurance Society; and, in the

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National Insurance Act of 1911

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case of a master, seaman, or apprentice serving on a foreign-going ship or a ship engaged in foreign trade to whom such provisions do apply the amount by which the employed rate and the employer's contributions are to be reduced shall be one halfpenny a week:

- (12) Members of the Seamen's National Insurance Society shall, for the purposes of this Part of this Act, be deemed to reside in England, and the medical benefit and sanatorium benefit of such members shall be administered by the society instead of by the Insurance Committee, and the provisions of this Part of this Act relating to the administration of those benefits shall apply accordingly subject to such modifications as may be prescribed, but nothing in this provision shall prevent the society agreeing with Insurance Committees for the administration of those benefits by the Committees in relation to individual members of the society.

*Provisions as to persons over sixty-five at commencement of Act.*

49.—(1) If any person who is of the age of sixty-five or upwards and under the age of seventy at the commencement of this Act is employed within the meaning of this Part of this Act, the like contributions shall, until he attains the age of seventy, be payable by his employer in respect of him as in the case of employed contributors, and the provisions of this Part of this Act relating to the payments of contributions and the recovery thereof shall apply accordingly.

(2) For every weekly contribution made by or in respect of such a person, there shall be contributed out of moneys provided by Parliament the sum of two pence.

(3) If such a person becomes a member of an approved society for the purposes of this section all contributions payable in respect of him under this section (including contributions out of moneys provided by Parliament) shall be credited to the society, and he shall become entitled to such benefits as the society may determine, but no reserve value shall be credited to the society in respect of him and no part of the contributions payable in respect of him shall be retained by the Insurance Commissioners towards the discharge of their liabilities in respect of reserve values.

(4) If such a person does not become a member of an approved society as aforesaid he shall become a deposit contributor, and accordingly all contributions payable in respect of him (including contributions out of moneys provided by Parliament) shall be carried to his credit in the Post Office fund, but the benefits to which he becomes entitled shall be such as may be determined by the Insurance Committee.

(5) No part of the cost of benefits under this section shall be payable out of moneys provided by Parliament.

*Special provisions as to seasonal trades.*

50. Where it is proved to the satisfaction of the Insurance Commissioners that a trade or business carried on by any employers is of a seasonal nature and subject to periodical fluctuation, and that those employers systematically employ persons throughout the year and work short time during the season when the trade or business is depressed, the Insurance Commissioners may make a special order reducing, as respects such persons, the employed rate and the contributions payable by the employers and contributors to such extent and for such period in the year as may be specified in the order, and increasing such rate and contributions to a corresponding extent and for a corresponding period during the remainder of the year, and the order may contain such incidental, supplemental, and consequential provisions as may appear necessary for adapting the other provisions of this Part of this Act to cases under this section.

*Special provisions as to inmates of charitable homes, &c.*

51.—(1) Where the managers of any institution carried on for charitable or reformatory purposes prove that the persons who are inmates of and supported by the institution receive maintenance and medical attendance when sick, the Insurance Commissioners may grant a certificate of exemption to those managers, and, where such a certificate of exemption is granted, any such inmates who are employed by the managers of the institution shall not, in respect of such employment, be deemed to be employed within the meaning of this Part of this Act:

Provided that it shall be a condition of such exemption that the managers shall be liable to pay in respect of any such inmate who, having been an inmate of the institution for more than six months, leaves the institution, the following sums:—

- (a) In the case of a person who was at the time of entering the institution below the age of sixteen, such capital sum as will be sufficient to secure him benefits under this Part of this Act at the full rate;
  - (b) In the case of a person who was at the time of entering the institution of the age of sixteen or upwards, and who was at that time an insured person and a member of an approved society, a sum equal to the value, calculated in the prescribed manner, of the contributions which, apart from this section, would have been payable in respect of him during the time he was in the institution.
- (2) Every such inmate as aforesaid shall, if he was an insured person before entering the institution, be suspended from benefits whilst he is such an inmate, and, if he was at such time a member of an approved society and has been an inmate of the institution for a period exceeding

## National Insurance Act of 1911

six months, the time during which he is in the institution shall be disregarded for the purpose of reckoning arrears.

*Special provision as to persons becoming certificated teachers.*

52. Where a person who has been employed to teach in a public elementary school ceases to be employed within the meaning of this Part of this Act by reason of becoming a teacher to whom <sup>61 & 62 Vict. c. 57.</sup> the Elementary School Teachers (Superannuation) Act, 1898, applies and does not become a voluntary contributor, there shall be paid to the Board of Education by the Approved society of which he is a member or, if he is not a member of an approved society, out of the amount standing to his credit in the Post Office fund, a sum equal to the value calculated in the prescribed manner of the contributions paid by or in respect of him under this Part of this Act since he first began to teach in a public elementary school, or, if the amount standing to his credit is less than that sum, then the whole amount so standing to his credit; and the sum so paid to the Board of Education shall be placed by them to his credit in the Deferred Annuity fund in accordance with the rules for the time being applicable thereto.

*Application to other persons in the service of the Crown.*

53.—(1) This Part of this Act shall apply to persons employed by or under the Crown, other than those with respect to whom special provision is made by this Part of this Act, in like manner as if the employer were a private person:

Provided that, in the case of a person employed in the private service of the Crown, the head of the department of the Royal Household in which he is employed shall be deemed to be his employer.

(2) The provisions of this Act relating to reduced insurance in cases where the employer is liable to pay wages during sickness shall extend in respect of persons employed by or under the Crown to cases where two-thirds only of the full remuneration are payable during periods, or parts of periods, of disease or disablement, if such remuneration is so payable for not less than three months in any year, and those provisions shall apply accordingly as if two-thirds of the full remuneration were substituted for the full remuneration and as if three months were substituted for six weeks as the maximum amount of time during any year such remuneration is payable.

## FINANCIAL PROVISIONS

*National Health Insurance Fund.*

54.—(1) All sums received in respect of contributions under this Part of this Act and all sums paid out of moneys provided by Parliament under



## National Insurance Act of 1911

this Part of this Act in respect of the benefits thereunder and the expenses of administration of such benefits shall be paid into a fund, to be called the National Health Insurance Fund, under the control and management of the Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and insurance committees for the purposes of the benefits administered by them and the administration of such benefits shall be paid out of that fund.

(2) The sums payable to the said fund out of moneys provided by Parliament shall be paid in such manner and at such times as the Treasury may determine.

(3) The Insurance Commissioners shall ascertain periodically what sums standing in the National Health Insurance Funds to the credit of the several societies and of the Post Office fund and of the Navy and Army Insurance Fund are available for investment, and the amount so ascertained shall, so far as not required under the provisions of this Part of this Act to be paid over to societies for investment, or to be retained for investment on their behalf, or for the discharge of liabilities of societies, be carried to a separate account, called the Investment Account, and shall be paid over to the National Debt Commissioners and by them invested in accordance with regulations made by the Treasury in any securities which are for the time being authorized by Parliament as investments for Savings Banks funds, but those Commissioners shall, in making the investment, give preference to stock or bonds issued under the provisions of the Acts relating to borrowing for raising capital for the purposes of the local loans fund where the purposes for which such capital is required is the making of advances for the purposes of the Housing of the Working Classes Acts, 1890 to 1909:

Provided that nothing in this provision shall prevent the Insurance Commissioners paying over to the National Debt Commissioners for temporary investment, pending the ascertainment of the amount available for investment as aforesaid, any sums in the National Health Insurance Fund not required to meet current liabilities.

(4) There shall be credited to the Post Office fund and to the Navy and Army Insurance Fund interest at the prescribed rate per annum on the sums from time to time standing to the credit of those funds in the Investment Account.

(5) The accounts of the National Health Insurance Fund shall be audited by the Comptroller and Auditor-General in such manner as the Treasury may direct.

(6) The National Debt Commissioners shall present to Parliament annually an account of the securities in which moneys forming part of the said fund are for the time being invested.

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National Insurance Act of 1911

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*Reserve values.*

55.—(1) The Insurance Commissioners shall cause tables to be prepared showing, in cases in which such provision is necessary, the capital sums (in this Part of this Act referred to as “reserve values”) which it is necessary to provide in respect of members entering into insurance at ages over the age of sixteen to meet the estimated loss (if any) arising through the acceptance by an approved society of such persons as members upon the terms and conditions as regards contributions and benefits prescribed by this Part of this Act.

(2) On a person of the age of seventeen or upwards joining an approved society for the purposes of this Part of this Act, there shall be credited to the society the reserve value (if any) appropriate to such person in accordance with such tables.

The sum so credited to a society in respect of reserve values shall carry interest at the rate of three per centum per annum.

(3) Out of each weekly contribution paid by or in respect of an insured person who is a member of an approved society (other than a voluntary contributor who entered into insurance within six months after the commencement of this Act and at the date of that entry was of the age of forty-five years or upwards) there shall be retained by the Insurance Commissioners the sum of one penny and five-ninths (or in the case of women one penny halfpenny), and the amounts so retained shall, together with any other moneys available for the purpose, be applied in manner provided by this Part of this Act towards discharging the liabilities of the Insurance Commissioners to approved societies in respect of the reserve values created by this section.

(4) The Insurance Commissioners shall periodically apportion amongst the several societies, including the Navy and Army Insurance Fund, the sums retained by them, and the sums, if any, otherwise available for the discharge of such liabilities as aforesaid, in proportion to the amount of reserve values for the time being credited to the several societies, and shall credit to each society the amount so apportioned, and any balance of the sums so credited to a society, after providing for interest on the reserve values for the time being credited to the society, shall be written off the amount of the reserve values so credited.

(5) If any person is convicted of the offence of knowingly making any false statement as to his age in any declaration made for the purpose of obtaining a reserve value to be credited to an approved society in respect of him, the reserve value shall be cancelled, and the member of the society in respect of whom it was credited shall be treated as if he had entered into insurance after the expiration of one year from the commencement of this Act.

*Transactions between the Insurance Commissioners and societies.*

56.—(1) The Insurance Commissioners shall, subject to the approval of the Treasury, make regulations with respect to crediting and debiting to the several societies sums received and paid by the Insurance Commissioners on behalf of and to societies and as to the payments to be made by and to the Commissioners to and by societies, and those regulations shall, amongst other things—

- (a) provide for<sup>\*</sup>crediting to each society the contributions paid by or in respect of the members of the society after deducting the amounts retained thereout for discharging the liabilities of the Insurance Commissioners in respect of reserve values;
- (b) require the Insurance Commissioners, on carrying any sum to the credit of an approved society in the investment account, to pay over to the society for investment, or, at the request of the society, to retain for investment on behalf of the society, four-sevenths, or, so far as the sums are attributable to women, one-half, of the amount so credited to the society;
- (c) provide for crediting to each society interest at the prescribed rate per annum on the sums for the time being standing to the credit of the society in the investment account;
- (d) provide for the discharge of debit balances in such manner as the Insurance Commissioners determine, either by the reduction of the reserve values credited to the society or out of the proceeds of the realization of securities held by the society or by the Commissioners on behalf of the society, and out of the sums standing to the credit of the society in the investment account, proportionately.

Provided that, in the case of any society which gives notice to that effect to the Insurance Commissioners, no part of the sums carried to the credit of the society in the investment account shall be paid over to the society or retained by the Commissioners for investment on its behalf, but the whole amount shall remain to the credit of the society in the investment account, and in such case the regulations made under the foregoing provisions shall apply to the society subject to the prescribed modifications.

(2) Every approved society shall invest any sums paid to the society for investment, and shall for the purpose have power to invest in any securities in which trustees are for the time being by law empowered to invest trust funds, or in any stocks, mortgages, or other securities issued by any local authority within the meaning of the Local Loans Act, 1875, and charged on any rates levied by or on the order or precept of such authority, or in any other securities for the time being approved by the Insurance Commissioners.

(3) Where, at the request of a society, the Insurance Commissioners

38 & 39 Vict.  
c. 83.

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National Insurance Act of 1911

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instead of paying over any sum to the society retain such sum for investment on behalf of the society, they shall invest such sum in accordance with the directions of the society in any securities in which the society might have invested it had it been paid over to the society, and shall from time to time vary such investments in accordance with the like directions, and shall pay over to the society all sums received by way of interest or dividend on the investments held by them on behalf of the society.

(4) Every approved society shall apply the sums received by way of interest or dividend on investments held by the society or by the Insurance Commissioners on behalf of the society towards the cost of the benefits under this Part of this Act of the members of the society and the cost of the administration of those benefits, or otherwise, as the Insurance Commissioners may prescribe.

## INSURANCE COMMISSIONERS: ADVISORY COMMITTEE

*Constitution of Insurance Commissioners, appointment of inspectors, &c.*

57.—(1) As soon as may be after the passing of this Act there shall be constituted for the purposes of this Part of this Act Commissioners (to be called the Insurance Commissioners), with a central office in London, and with such branch offices as the Treasury may think fit, and the Commissioners shall be appointed by the Treasury, and of the Commissioners so appointed one at least shall be a duly qualified medical practitioner who has had personal experience of general practice.

(2) The Insurance Commissioners may sue and be sued, and may for all purposes be described by that name, and shall have an official seal which shall be officially and judicially noticed, and such seal shall be authenticated by any Commissioner or the secretary to the Commissioners, or some person authorized by the Commissioners to act on behalf of the secretary.

(3) The Insurance Commissioners may appoint such officers, inspectors, referees, and servants, for the purposes of this Part of this Act as the Commissioners, subject to the approval of the Treasury as to number, may determine, and there shall be paid out of moneys provided by Parliament to the Commissioners and to such officers, inspectors, referees, and servants, such salaries or remuneration as the Treasury may determine; and any expenses incurred by the Treasury (including the remuneration of valuers and auditors appointed by the Treasury) or the Commissioners in carrying this Part of this Act into effect, to such extent as the Treasury may sanction, shall be defrayed out of moneys provided by Parliament.

(4) Every document purporting to be an order or other instrument issued by the Insurance Commissioners and to be sealed with the seal of

## National Insurance Act of 1911

the Commissioners authenticated in manner provided by this section, or to be signed by the secretary to the Commissioners or any person authorized by the Commissioners to act on behalf of the secretary, shall be received in evidence and be deemed to be such order or instrument without further proof, unless the contrary is shown.

(5) The Insurance Commissioners may empower any inspector appointed by them to exercise in respect of any approved society or any branch of an approved society all or any of the powers given by section seventy-six of the Friendly Societies Act, 1896, to an inspector appointed thereunder:

Provided that any complaint or report as to any such branch as aforesaid made by an inspector under this subsection shall be communicated to the central body or other central authority of the society.

*Appointment of Advisory Committee.*

58. The Insurance Commissioners shall, as soon as may be after the passing of this Act, appoint an Advisory Committee for the purpose of giving the Insurance Commissioners advice and assistance in connexion with the making and altering of regulations under this part of this Act, consisting of representatives of associations of employers and approved societies, of duly qualified medical practitioners who have personal experience of general practice, and of such other persons as the Commissioners may appoint, of whom two at least shall be women.

## APPOINTMENT OF INSURANCE COMMITTEES

*Insurance Committees.*

59.—(1) An Insurance Committee shall be constituted for every county and county borough.

(2) Every such committee shall consist of such number of members as the Insurance Commissioners, having regard to the circumstances of each case, determine, but in no case less than forty or more than eighty, of whom—

- (a) three-fifths shall be appointed in such manner as may be prescribed by regulations of the Insurance Commissioners so as to secure representation of the insured persons resident in the county or county borough who are members of approved societies, and who are deposit contributors, in proportion, as nearly as may be, to their respective numbers;
- (b) one-fifth shall be appointed by the council of the county or county borough;
- (c) two members shall be elected in manner provided by regulations made by the Insurance Commissioners, either by any association of duly qualified medical practitioners resident in the county or

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National Insurance Act of 1911

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county borough which may have been formed for that purpose under such regulations, or, if no such association has been formed, by such practitioners;

- (d) one member or, if the total number of the committee is sixty or upwards, two members, or, if the total number of the committee is eighty, three members, shall be duly qualified medical practitioners appointed by the council of the county or county borough;
- (e) the remaining members shall be appointed by the Insurance Commissioners:

Provided that—

- (i) The regulations with respect to the appointment of members to represent insured persons shall provide for conferring on the approved societies which have members resident in the county or county borough the power of appointing the representatives of such members, and, where an association of the deposit contributors resident in the county or county borough has been formed under such regulations as aforesaid, for conferring on such association the power of appointing the representatives of the deposit contributors;
  - (ii) Of the members appointed by the council of the county or county borough two at least shall be women, and of the members appointed by the Insurance Commissioners one at least shall be a duly qualified medical practitioner and two at least shall be women.
- (3) The Insurance Commissioners may, where any part of the cost of medical benefit or sanatorium benefit is defrayed by the council of the county or county borough, increase the representation of the council and make a corresponding diminution in the representation of the insured persons.
- (4) The Insurance Commissioners may make regulations as to the appointment, quorum, term of office, and rotation of members and proceedings generally (including the appointment of sub-committees consisting wholly or partly of members of the committee) of the committee, and the employment of officers and the provision of offices by the committee, including the use by the committee, with or without payment, of any offices of a local authority, but subject to the consent of such authority, and any such regulations may provide for the constitution of district insurance committees, and for apportioning amongst the several district insurance committees any of the powers and duties of the Insurance Committee and regulating the relations of district insurance committees to the Insurance Committee and to one another:

Provided that the regulations so made shall require the Insurance Committee of every county (except in cases where, owing to special circumstances, the Commissioners consider it unnecessary) within six months

after the commencement of this Act to prepare after consultation with the county council and submit for approval to the Commissioners a scheme for the appointment of district insurance committees for the county and prescribing the area to be assigned to each such committee, and in particular the scheme shall provide for the appointment of a district insurance committee for each borough (including the City of London and a metropolitan borough) within the county having a population of not less than ten thousand, and for each urban district within the county with a population of not less than twenty thousand, but, if the Insurance Committee or, on appeal, the Insurance Commissioners consider it expedient in the case of any such borough (outside London) or urban district, any adjoining areas may be grouped with such borough or urban district for the purpose of the appointment of a district insurance committee.

(5) Any Insurance Committee may, and shall if so required by the Insurance Commissioners, combine with any one or more other Insurance Committees for all or any of the purposes of this Part of this Act, and, where they so combine, the provisions of this Part of this Act shall apply with such necessary adaptations as may be prescribed.

*Powers and duties of Insurance Committees.*

60.—(1) The Insurance Committee of a county or county borough shall, in addition to the other powers and duties conferred and imposed on it by this Part of this Act, have the following powers and duties:—

- (a) It shall make such reports as to the health of insured persons within the county or county borough as the Insurance Commissioners, after consultation with the Local Government Board, may prescribe, and shall furnish to them such statistical and other returns as they may require, and may make to them such other reports on the health of such persons and the conditions affecting the same, and may make such suggestions with regard thereto as it may think fit, and the Insurance Commissioners shall forward to the councils of the counties, boroughs, and urban and rural districts, which appear to them to be affected by or interested in any such reports, returns, or suggestions, copies of such reports, returns, and suggestions, and the reports and returns so made shall include such reports and returns as will enable an analysis and classification to be made of the persons who are deposit contributors;
- (b) It shall make such provision for the giving of lectures and the publication of information on questions relating to health as it thinks necessary or desirable, and may, if it thinks fit, for that purpose make arrangements with local education authorities, universities and other institutions;
- (c) It shall keep proper books and accounts in the prescribed form

## National Insurance Act of 1911

and shall, when required, submit such accounts to audit by auditors appointed by the Treasury.

(2) For the purpose of assisting Insurance Committees in the exercise and performance of their powers and duties under this Part of this Act, and with a view to promoting co-operation between such committees and the councils of counties, boroughs, and urban and rural districts, any medical officer of health may, at the request of an Insurance Committee and with the consent of the council by whom he is appointed, attend meetings of the committee and give such advice and assistance as is in his power.

(3) For the purposes of this section, the council of a borough includes the mayor, aldermen, and commons of the City of London in common council assembled, and the council of a metropolitan borough.

*Income.*

61.—(1) All sums available for sanatorium benefit in a county or county borough, and all sums payable in respect of the members of approved societies and deposit contributors resident in the county or county borough for the purposes of medical benefit and administrative expenses in any year, shall be paid or credited to the Insurance Committee at the commencement of that year.

(2) There shall also be paid to the Insurance Committee in every year by each approved society having members who are insured persons resident in the county or county borough, in respect of each such member, the sum of one penny towards the administrative expenses of the committee:

Provided that, if the special circumstances of any county are such that the Insurance Commissioners consider that the travelling expenses of the members of the committee should be repaid to them by the committee, the Insurance Commissioners may authorize such repayment, and in such case may increase the said sum of one penny to such sum, not exceeding two-pence, as they may determine.

(3) It shall be lawful for any local authority, out of any fund or rate out of which the expenses of the authority are payable, to subscribe such sums as it may think fit towards the general purposes of the Insurance Committee.

*Local medical committees.*

62. Where a local medical committee has been formed for any county or county borough or for any area for which a district committee has been formed and the Insurance Commissioners are satisfied that such committee is representative of the duly qualified medical practitioners resident in the county or county borough or such area as aforesaid, they shall recognize such committee, and, where a local medical committee has been so recog-



## National Insurance Act of 1911

nized, it shall, subject to regulations made by the Insurance Commissioners be consulted by the Insurance Committee or district committee, as the case may be, on all general questions affecting the administration of medical benefit, including the arrangements made with medical practitioners giving attendance and treatment to insured persons, and shall perform such other duties, and shall exercise such powers, as may be determined by the Insurance Commissioners.

## EXCESSIVE SICKNESS

*Inquiries into causes of excessive sickness, &c.*

63.—(1) Where it is alleged by the Insurance Commissioners or by any approved society or Insurance Committee that the sickness which has taken place among any insured persons, being, in the case where the allegation is made by a society or committee, persons for the administration of whose sickness and disablement benefits the society or committee is responsible, is excessive, and that such excess is due to the conditions or nature of employment of such persons, or to bad housing or insanitary conditions in any locality, or to an insufficient or contaminated water supply, or to the neglect on the part of any person or authority to observe or enforce the provisions of any Act relating to the health of workers in factories, workshops, mines, quarries, or other industries, or relating to public health, or the housing of the working classes, or any regulations made under any such Act, or to observe or enforce any public health precautions, the Commissioners or the society or committee making such allegation may send to the person or authority alleged to be in default a claim for the payment of the amount of any extra expenditure alleged to have been incurred by reason of such cause as aforesaid, and, if the Commissioners, society, or committee and such person or authority fail to arrive at any agreement on the subject, may apply to the Secretary of State or the Local Government Board, as the case may require, for an inquiry, and thereupon the Secretary of State or Local Government Board may appoint a competent person to hold an inquiry.

(2) If, upon such inquiry being held, it is proved to the satisfaction of the person holding the inquiry that the amount of such sickness has—

(i) during a period of not less than three years before the date of the inquiry; or

(ii) if there has been an outbreak of any epidemic, endemic or infectious disease, during any less period;

been in excess of the average expectation of sickness by more than ten per cent., and that such excess was in whole or in part due to any such cause as aforesaid, the amount of any extra expenditure found by the person holding the inquiry to have been incurred under this Part of this

## National Insurance Act of 1911

Act by any societies or committees where the allegation is made by the Insurance Commissioners, or, if the allegation is made by a society or committee, by the society or committee in question, by reason of such cause shall be ordered by him to be made good in accordance with the following provisions:—

- (a) Where the excess or such part thereof as aforesaid is due to the conditions or nature of the employment or to any neglect on the part of any employer to observe or enforce any such Act or regulation as aforesaid, it shall be made good by the employer;
- (b) Where such excess or such part thereof as aforesaid is due to bad housing or insanitary conditions in the locality, or to any neglect on the part of any local authority to observe or enforce any such Act or regulation or such precautions as aforesaid, it shall be made good by such local authority as appears to the person holding the inquiry to have been in default, or, if due to the insanitary condition of any particular premises, shall be made good either by such authority or by the owner, lessee, or occupier of the premises who is proved to the satisfaction of the person holding the inquiry to be responsible;
- (c) Where the excess or such part thereof as aforesaid is due to an insufficient or contaminated water supply, it shall be made good by the local authority, company, or person by whom the water is supplied, or who having imposed upon them the duty of affording a water supply have refused or neglected to do so, unless the local authority, company, or person prove that such insufficiency or contamination was not due to any default on the part of the authority, company, or person, but arose from circumstances over which they had no control.
- (3) Where any such inquiry as aforesaid is held in respect of bad housing or insanitary conditions in any locality, it shall be lawful for the local authority to serve notice upon the owner, lessee, or occupier of any premises which are the subject-matter of the inquiry, and, where it is proved that such a notice has been served and that any such extra expense as aforesaid, or any part thereof, has been caused by the act or default of such owner, lessee or occupier, the person holding the inquiry may order the owner, lessee, or occupier to repay the local authority the amount of the extra expenditure or part thereof which has been so caused.
- (4) For the purpose of this section, the average expectation of sickness shall be calculated in accordance with the tables prepared by the Insurance Commissioners for the purpose of valuations under this Part of this Act, but any excessive sickness attributable to any disease or disablement which is due to any disease or injury in respect of which damages or compensation are payable under the Employers' Liability Act, 1880, or the

## National Insurance Act of 1911

Workmen's Compensation Act, 1906, or at common law, shall not be taken into account.

(5) The Insurance Commissioners shall make regulations as to the procedure on inquiries under this section, and a person holding an inquiry under this section shall have all such powers as an inspector of the Local Government Board has for the purposes of an inquiry under the Public Health Acts, and shall have power to order how and by what parties costs, including such expenses as the Secretary of State or Local Government Board may certify to have been incurred by them, are to be paid, and an order made by such person under this section may, by leave of the High Court, be enforced in the same manner as a judgment or order of the Court, to the same effect:

Provided that a society or committee shall not be ordered to pay the costs of the other party to the inquiry if the person holding the inquiry certifies that the demand for an inquiry was reasonable under the circumstances, and, when he so certifies the Treasury may repay to the society or committee the whole or any part of the costs incurred by it.

(6) Without prejudice to any other method of recovery, any sum ordered under this section to be paid by a local authority may, in accordance with the regulations of the Local Government Board with the approval of the Treasury, be paid out of the Local Taxation Account and deducted from any sums payable either directly or indirectly out of that account to the local authority.

(7) For the purposes of this section, any expenditure on any benefit administered by an Insurance Committee shall be deemed to be expenditure of that Committee, but any sums paid to any such Committee under this section to meet extra expenditure on sickness benefit or disablement benefit shall be dealt with for the benefit of deposit contributors in accordance with regulations made by the Insurance Commissioners.

(8) Where under this section any sum is paid to the Insurance Commissioners, the Insurance Commissioners shall apply the same in discharge of any expenses incurred by the Commissioners under this section and shall distribute the balance amongst the societies and committees which appear to the Commissioners to have incurred extra expense on account of the excessive sickness in such proportions as the Commissioners think just.

(9) Where an association of deposit contributors resident in any county or county borough has been formed under regulations made by the Insurance Commissioners, the Insurance Committee for the county or county borough shall, if so required by the association, take proceedings under this section on behalf and at the expense of the association.

National Insurance Act of 1911

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## SUPPLEMENTARY PROVISIONS

*Provisions of sanatoria, &c.*

64.—(1) If under any other Act of the present session any sum is made available for the purposes of the provisions of or making grants in aid to sanatoria and other institutions for the treatment of tuberculosis or such other diseases as the Local Government Board with the approval of the Treasury may appoint, such sum shall be distributed by the Local Government Board with the consent of the Treasury in making grants for those purposes, and the Treasury before giving their consent shall consult with the Insurance Commissioners:

Provided that such sum shall be apportioned between England, Wales, Scotland, and Ireland in proportion to their respective populations ascertained in accordance with the returns of the census taken in the year nineteen hundred and eleven.

(2) If any such grant is made to a county council, the Local Government Board may authorise the county council to provide any such institution, and, where so authorised, the county council shall have power to erect buildings and to manage and maintain the institution and for that purpose to enter into agreements and make arrangements with the Insurance Committees and other authorities and persons, and to do all such things as may be necessary for the purposes aforesaid, and any expenses of the county council, so far as not defrayed out of the grant, shall be defrayed out of the county fund as expenses for general county purposes, or, if the order of the Local Government Board so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order.

(3) For the purpose of facilitating co-operation amongst county councils, county borough councils, and other local authorities (not being Poor Law authorities) for the provision of such sanatoria and other institutions as aforesaid, the Local Government Board may by order make such provisions as appear to them necessary or expedient, by the constitution of joint committees, joint boards, or otherwise, for the joint exercise by such councils and authorities of their powers in relation thereto, and any such order may provide how, in what proportions, and out of what funds or rates the expenses of providing such institutions, so far as they are not defrayed out of grants under this section, are to be defrayed, and may contain such consequential, incidental, and supplemental provisions as may appear necessary for the purposes of the order, and an order so made shall be binding and conclusive in respect of the matters to which it relates.

(4) An Insurance Committee may, with the consent of the Insurance Commissioners, enter into agreements with any person or authority (other than a Poor Law authority) that, in consideration of such person

## National Insurance Act of 1911

or authority providing treatment in a sanatorium or other institution or otherwise for persons recommended by the Committee for sanatorium benefit, the Committee will contribute out of the funds available for sanatorium benefit towards the maintenance of the institution or provision of such treatment, such annual or other payment, and subject to such conditions and for such period as may be agreed, and any such agreement shall be binding on the Committee and their successors, and any sums payable by the Committee thereunder may be paid by the Insurance Commissioners and deducted from the sums payable to the Committee for the purposes of sanatorium benefit.

*Power to Insurance Commissioners to make regulations, &c.*

65. The Insurance Commissioners may make regulations for any of the purposes for which regulations may be made under this Part of this Act or the schedules therein referred to, and for prescribing anything which under this Part of this Act or any such schedules is to be prescribed, and generally for carrying this Part of this Act into effect, and any regulations so made shall be laid before both Houses of Parliament as soon as may be after they are made, and shall have effect as if enacted in this Act:

Provided that, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

*Determination of questions by Insurance Commissioners.*

66.—(1) If any question arises—

- (a) as to whether any employment or any class of employment is or will be employment within the meaning of this Part of this Act or as to whether a person is entitled to become a voluntary contributor; or
- (b) as to the rate of contributions payable by or in respect of any insured person; or
- (c) as to the rates of contributions payable in respect of an employed contributor by the employer and the contributor respectively; the question shall be determined by the Insurance Commissioners, in accordance with regulations made by them for the purpose: Provided that—
  - (i) if any person feels aggrieved by the decision of the Insurance Commissioners on any question arising under paragraph (a), he may appeal therefrom to the county court, with a further right of appeal upon any question of law to such judge of the High Court as may be selected for the purpose by the Lord Chancellor, and the decision of that judge shall be final;

## National Insurance Act of 1911

- (ii) the regulations of the Insurance Commissioners may provide for questions under paragraph (b) being determined, in the case of any person who is or is about to become a member of an approved society, by the society;
  - (iii) the Insurance Commissioners may, if they think fit, instead of themselves deciding whether any class of employment is or will be employment within the meaning of this Part of this Act, submit the question for decision to the High Court in such summary manner as subject to rules of court may be directed by the court, and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question, and the decision of the court shall be final.
- (2) This section shall come into operation on the passing of this Act.

*Disputes:*

67.—(1) Subject to the provisions of the foregoing section every dispute between—

- (a) An approved society or a branch thereof and an insured person who is a member of such society or branch or any person claiming through him;
- (b) An approved society or branch thereof, and any person who has ceased to be a member for the purposes of this Part of this Act of such society or branch, or any person claiming through him;
- (c) An approved society and any branch thereof;
- (d) Any two or more branches of an approved society; relating to any thing done or omitted by such person, society, or branch (as the case may be) under this Part of this Act or any regulation made thereunder, shall be decided in accordance with the rules of the society, but any party to such dispute may, in such cases and in such manner as may be prescribed, appeal from such decision to the Insurance Commissioners.

(2) Every dispute between an insured person and the Insurance Committee relating to anything done or omitted by such person or the Insurance Committee under this Part of this Act, or any regulation made hereunder, shall be decided in the prescribed manner by the Insurance Commissioners.

(3) The Insurance Commissioners may authorise referees appointed by them to decide any appeal or dispute submitted to the Insurance Commissioners under this section.

(4) The Insurance Commissioners may make regulations as to the procedure on any such appeal or dispute, and such regulations may apply any of the provisions of the Arbitration Act, 1889, <sup>52 & 53 Vict. c. 49.</sup> but, except so far as it may be so applied, the Arbitration Act, 1889, shall not apply to proceedings under this section, and any decision

## National Insurance Act of 1911

given by the Insurance Commissioners or a referee under this section shall be final and conclusive.

*Protection against distress and execution in certain cases.*

68.—(1) Where the medical practitioner attending on any insured person in receipt of sickness benefit certifies that the levying of any distress or execution upon any goods or chattels belonging to such insured person and being on premises occupied by him, or the taking of any proceedings in ejectment or for the recovery of any rent or to enforce any judgment in ejectment against such person, would endanger his life, and such certificate has been sent to the Insurance Committee and has been recorded in manner herein-after provided, it shall not be lawful during any period named in the certificate for any person to levy any such distress or execution or to take any such proceedings or to enforce any such judgment against the insured person:

Provided that, if any person desirous of levying such distress or execution or taking such proceedings or enforcing such judgment disputes the accuracy of the certificate, he may apply to the registrar of the county court, who, if he is of opinion that the certificate should be cancelled or modified, may make an order cancelling or modifying it, and no appeal shall lie against any such order or a refusal to make any such order.

(2) A certificate granted for the purpose of this section shall continue in force for one week or such less period as may be named in the certificate, but may be renewed from time to time for any period not exceeding one week, up to but not beyond the expiration of three months from the date of the grant of the original certificate, but no such renewal shall have effect unless sent to the Insurance Committee and recorded as aforesaid:

Provided that the protection conferred by this section shall not extend beyond the expiration to one month from such date if, on demand being made by the person desirous of levying such distress or execution, or taking such proceedings, or enforcing such judgment, proper security is not given for payment of rent thereafter to become due from the insured person or the amount of the judgment debt, as the case may be, and any dispute as to the sufficiency of the security shall be determined by the registrar of the county court whose decision shall be final and not subject to appeal.

(3) If any person knowingly levies or attempts to levy any such distress or execution or takes any such proceedings or enforces or attempts to enforce any such judgment in contravention of this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds.

(4) A certificate or renewal thereof granted under this section shall forthwith be sent to the Insurance Committee, and the Committee shall, unless it has reason to suspect its genuineness, record it in a special register without fee, and such register shall, at all reasonable times, be open

## National Insurance Act of 1911

to inspection; and, where so recorded, its genuineness shall not be questioned in any proceedings against a sheriff or other officer for failure to levy any distress or execute any warrant.

(5) Where the time within which a warrant may be executed is limited, any period during which the warrant cannot be executed by reason of the provisions of this section shall be disregarded in computing the time within which the warrant may be executed.

*Offences.*

69.—(1) If, for the purpose of obtaining any benefit or payment or the crediting of a reserve value under this Part of this Act, either for himself or for any other person, any person knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with or without hard labour.

(2) If any employer has failed to pay any contributions which under this Part of this Act he is liable to pay in respect of an employed contributor, or if any such employer, any insured person, or any other person is guilty of any other contravention of or non-compliance with any of the requirements of this Part of this Act or the regulations made thereunder in respect of which no special penalty is provided, he shall for each offence be liable on summary conviction to a fine not exceeding ten pounds, and where the offence is failure or neglect on the part of the employer to make any such contributions, to pay to the insurance Commissioners a sum equal to the amount of the contributions which he has so failed or neglected to pay, which sum when paid shall be treated as a payment in satisfaction of such contributions:

Provided that no person shall be liable to any penalty in respect of any matter if he has acted in conformity with any decision in respect thereto by the Insurance Commissioners, or, if the matter is one which the Insurance Committee is competent to decide, in conformity with its decision.

*Civil proceedings against employer for neglecting to pay contributions.*

70.—(1) Where an employer has failed or neglected to pay any contributions which under this Part of this Act he is liable to pay in respect of a person being a member of an approved society in his employment, and by reason thereof that person has been deprived in whole or in part of his right to any benefits which would otherwise have been payable to him, he shall be entitled to take proceedings against the employer for the value of the right of which he has been so deprived, and in any such proceedings the employer may be ordered to pay to the Insurance Commissioners a sum equal to the value so ascertained, which sum when paid shall be carried to the credit of the society of which such person is a member, and thereupon such person shall thenceforth be entitled to receive from the society benefits at the same rate as he would have been entitled to had the



contributions been properly paid, together with the difference between the amount of the benefits (if any) he has actually received and the benefits he would have received had the contributions been properly paid.

(2) Proceedings may be taken under either this or the last preceding section notwithstanding that proceedings have also been taken under the other section in respect of the same failure or neglect to pay contributions.

*Repayment of benefits if properly paid.*

71. If it is found at any time that a person has been in receipt of any payment of benefit under this Part of this Act without being lawfully entitled thereto he, or in the case of his death his personal representatives, shall be liable to repay to the Insurance Commissioners the amount of such payment or benefit, and any such amount may be recovered as a debt due to the Crown and when so recovered shall be carried to the credit of the society of which such person was a member, or if he was not a member of any approved society, of the Post Office fund.

*Provisions as to application of existing funds of friendly societies.*

72.—(1) Every registered friendly society which provides benefits similar to any of those conferred by this Part of this Act, shall submit to the Registrar of Friendly Societies a scheme for continuing, abolishing, reducing, or altering such benefits as respects members who become insured persons and for continuing, abolishing, or reducing the contributions of such members, so, however, that the combined effect of the alteration of the benefits and contributions shall not prejudicially affect the solvency of the society, and, if the scheme or a supplementary scheme shows on an actuarial valuation that, owing to the alterations in the benefits and contributions effected by the scheme, any part of the existing funds of the society is set free as not being required to meet the liabilities of the society, the scheme or the supplementary scheme shall provide for the application of the part of the funds so set free in any or more of the following ways:—

- (a) towards the cost of the provision of other or increased benefits payable by the society independently of this Part of this Act to existing members whether insured persons or not;
- (b) in reduction of the contributions payable by such members in respect of the benefits payable by the society independently of this Part of this Act;
- (c) towards the payment or repayment of contributions payable under this Part of this Act by such of its existing members as are entitled and elect to receive benefits under this Part of this Act through the society.

(2) This section shall apply to branches of registered societies in like manner as to societies: Provided that a society with branches may, if it

## National Insurance Act of 1911

so desires) subject always to the exercise of any right of a branch, expressly conferred by the rules of the society, to dispose of any of its funds for the benefit solely of the members of the branch), submit a scheme applicable to all its branches, and it shall be competent for the society to provide by its scheme or supplementary scheme for the application of the whole or any part of any sums so set free towards the discharge of any deficiencies in any of its branches which may be found to exist on such actuarial valuation as aforesaid.

(3) Any scheme adopted by a society or branch of a society in accordance with its rules when confirmed by the Registrar of Friendly Societies shall be deemed to be incorporated in the registered rules of the society or branch and may be amended accordingly, so, however, that no amendment shall be inconsistent with the provisions of this section.

(4) This section shall apply to seamen, marines, and soldiers, from whose pay deductions are made under this Part of this Act as if they were insured persons, and for the purposes of this section "existing" means existing at the passing of this Act.

(5) This section shall come into operation on the passing of this Act.

*Provisions as to existing employer's provident funds.*

73.—(1) Where at the passing of this Act a superannuation or other provident fund had been established for the benefit of the persons employed by one or more employers, the provisions of the last foregoing section shall apply with the necessary adaptations and with this modification that, where under the Act, deed, or other instrument establishing the fund or otherwise any sum is payable by the employer towards benefits secured by the Act or deed, and those benefits include benefits similar to any of those conferred by this Part of this Act, the scheme may provide for allowing the employer to deduct from any contributions payable by him as aforesaid towards benefits of a nature similar to those under this Act of this Part an amount not exceeding the amount of the employer's contributions payable by him under this Part of this Act.

(2) Where the fund is one out of which pensions or superannuation allowances are payable, and it is proved to the satisfaction of the Insurance Commissioners that the rearrangements required in consequence of this Part of this Act, will, upon a valuation under the existing rules of the fund, affect prejudicially the sum available for the payment of pensions or superannuation allowances, the Insurance Commissioners may grant a certificate authorising the value of the prospective extension of benefits under this Part of this Act when the reserve values have been written off as hereinbefore provided, to be brought into account in the valuation of the assets available for the discharge of the liabilities of the fund in respect of pensions and superannuation allowances.

National Insurance Act of 1911

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*Provisions as to minors who are members of approved societies.*

74. Any member of an approved society who is a minor may execute all instruments and give all acquittances necessary to be executed or given under the rules of such society, but shall not be a member of the Committee or a trustee, manager, or treasurer of such society or any branch thereof.

*Power for societies to register under Friendly Societies Act, 1896.*

75. Any society for the purpose of carrying on business under this Act, either alone or together with any purpose mentioned in section eight, subsection (1), of the Friendly Societies Act, 1896, may, after the passing of this Act, be registered as a friendly society under the Friendly Societies Act, 1896, notwithstanding that the contributions under this Act are not voluntary.

*Application of Acts of Parliament to approved societies and sections.*

76.—(1) Except in so far as may be inconsistent with this Part of this Act, any business transacted under this Part of this Act by any approved society shall be treated as part of the ordinary business transacted by societies of the class to which that society belongs, and any enactment applying to the society in relation to the transaction of such ordinary business shall apply accordingly in relation to the business transacted by the society under this Part of this Act.

(2) This section shall apply to an approved society which is a separate section of another body, subject to the necessary adaptation.

*Powers of the Local Government Board.*

77.—(1) The Local Government Board may, for the purposes of their powers and duties under this Part of this Act, hold such local inquiries and investigations as they may think fit, and the Board and their inspectors shall have for the purposes of such an inquiry the same powers as they respectively have for the purposes of an inquiry under the Public Health Acts, and the expenses incurred by the Board in respect of such inquiries and other proceedings under this Part of this Act (including the salary of any inspector or officer of the Board engaged in the inquiry or proceedings, not exceeding three guineas a day) shall be paid by such authorities and persons and out of such funds and rates as the Board may by order direct, and the Board may certify the amount of the expenses so incurred, and any sum so certified and directed by the Board to be paid by the authority or person shall be a debt from that authority or person to the Crown: Provided that this provision shall not apply to inquiries with respect to responsibility for excessive sickness.

(2) Any approval given by the Local Government Board under this

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National Insurance Act of 1911

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Part of this Act may be given for such term, and subject to such conditions as the Board may think fit, and the Board shall have power to withdraw any approval which they have given.

(3) The Local Government Board may make it a condition of any approval to be given, or grant of money to be made under this Part of this Act, that the Board shall have such powers of inspection as may be agreed.

*Power to remove difficulties.*

78. If any difficulty arises with respect to the constitution of Insurance Committees, or the advisory committee, or otherwise in bringing into operation this Part of this Act, the Insurance Commissioners, with the consent of the Treasury, may by order make any appointment and do anything which appears to them necessary or expedient for the establishment of such committees or for bringing this Part of this Act into operation, and any such order may modify the provisions of this Act so far as may appear necessary or expedient for carrying the order into effect: Provided that the Insurance Commissioners shall not exercise the powers conferred by this section after the first day of January nineteen hundred and fourteen.

*Interpretation.*

79. For the purposes of this Part of this Act, unless the context otherwise requires,—

The expression “branch,” in relation to a society, shall not include any branch of the society which is not itself separately registered;

The expression “disease or disablement” means such disease or disablement as would entitle an insured person to sickness or disablement benefit;

The expression “dependants,” in relation to any person, includes such persons as the approved society or Insurance Committee shall ascertain to be wholly or in part dependent upon his earnings;

A person whose normal occupation is employment within the meaning of this Part of this Act shall, for the purpose of reckoning the number and rate of contributions, be deemed to continue to be an employed contributor notwithstanding that he is temporarily unemployed, but, if such period of unemployment extends beyond twelve months, he shall not continue to be an employed contributor unless the approved society of which he is a member or, if he is not a member of such a society, the Insurance Committee, is satisfied that his unemployment is due to inability to obtain employment, and is not due to any change in his normal occupation;

The suspension of a member of an approved society from benefits under this Part of this Act shall not be deemed to deprive the member of his membership;

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National Insurance Act of 1911

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Membership of an approved society means membership for the purposes of this Part of this Act;

The expression "valuer" means a person possessing actuarial qualifications as may be approved by the Treasury;

The expression "county" means administrative county;

The Scilly Isles shall be deemed to be a county and the council of those Isles the council of a county, but the Insurance Committee for the Scilly Isles shall be constituted in such manner as the Insurance Commissioners prescribe;

Monmouthshire shall be deemed to form part of Wales;

A person shall be deemed according to the law in England, Wales, and Ireland, as well as according to the law in Scotland, not to have attained the age of seventeen until the commencement of the seventeenth anniversary of the day of his birth, and similarly with respect to other ages.

*Application to Scotland.*

80. This Part of this Act in its application to Scotland shall be subject to the following modifications:—

- (1) For the purpose of carrying this Part of this Act into effect in Scotland, there shall be constituted, as soon as may be after the passing of this Act, Commissioners for Scotland (to be called the Scottish Insurance Commissioners) with a central office in Edinburgh, and with such branch offices in Scotland as the Treasury may think fit, and the Scottish Insurance Commissioners, of whom one at least shall be a duly qualified medical practitioner, shall be appointed by the Treasury, and may appoint such officers, inspectors, referees, and servants for the purposes aforesaid as the Scottish Insurance Commissioners, subject to the approval of the Treasury, may determine, and the provisions of this Part of this Act with respect to the payment of the salaries and remuneration of the Insurance Commissioners, and the officers, inspectors, referees, and servants appointed by them, and with respect to the payment of the expenses incurred by the Treasury or the Insurance Commissioners in carrying this Part of this Act into effect shall, with the necessary modifications, apply to the payment of the salaries and remuneration of the Scottish Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them and to the payment of expenses incurred by the Treasury or the Scottish Insurance Commissioners in carrying this Part of this Act into effect in Scotland, and for the purpose aforesaid the Scottish Insurance Commissioners, and the officers, inspectors, referees, and servants appointed by them shall respectively have all the like powers and

## National Insurance Act of 1911

duties as are, by the provisions of this Act, conferred and imposed on the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and references in those provisions to the Insurance Commissioners shall be construed as references to the Scottish Insurance Commissioners:

- (2) All sums received from contributions under this Part of this Act in respect of insured persons resident in Scotland, and all sums paid out of moneys provided by Parliament in respect of benefits under this Part of this Act to such persons, and the expenses of administration of such benefits shall be paid into a fund to be called the Scottish National Health Insurance Fund, under the control and management of the Scottish Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and Insurance Committees for the purposes of such benefits and the administration of such benefits shall be paid out of that fund, and the foregoing provisions of this Act, with respect to the National Health Insurance Fund, shall, with the necessary modifications, apply to the Scottish National Health Insurance Fund accordingly:
- (3) The expression "Local Government Board" means the Local Government Board for Scotland (in this section referred to as the Board): Provided that, as regards the making of regulations respecting sums payable out of the local Taxation (Scotland) Account, the said expression means the Secretary for Scotland; the expression "Local Taxation Account" means the Local Taxation (Scotland) Account; and the expression "inspector of the Local Government Board" includes a person acting under section seven or section eight of the Public Health (Scotland) Act, 1897:
- (4) The expression "county borough" means a burgh or police burgh within the meaning of the Local Government (Scotland) Act, 1889 (in this section referred to as <sup>60 & 61 Vict. c. 38.</sup> the Act of 1889), containing within the police boundaries thereof according to the census of nineteen hundred and eleven a population of twenty thousand or upwards, and includes the burgh of Dumfries and the police burgh of Maxwelltown, as if they were a single burgh, and all other burghs and police burghs shall, for the purposes of this Part of this Act, be held to be within the county, and unless already presented on the county council shall, for the purposes of this Part of this Act, be represented thereon as may be determined by the Secretary for Scotland; Provided that references to the council of a county borough shall, in the case of Dumfries and Maxwelltown, be construed as references to a joint committee of the town councils thereof <sup>52 & 53 Vict. c. 50.</sup>

## National Insurance Act of 1911

which shall from time to time be appointed subject to the provisions of section seventy-six of the Act of 1889:

- (5) References to a county and the county council thereof shall, as regards—

(a) the counties of Kinross and Clackmannan; and

(b) the counties of Elgin and Nairn;

be construed in each case as references respectively to a combination of the two recited counties and to a joint committee of the county councils thereof which shall from time to time be appointed subject to the provisions of section seventy-six of the Act of 1889:

- (6) The minimum number of an insurance committee for any area containing a population of less than forty thousand shall be twenty-five instead of forty; and, where a number less than forty is fixed, the constitution of the committee may be varied as may be prescribed, so, however, that the proportion of members to be appointed by insured persons and by a county or town council and the number of members possessing a medical qualification shall not be altered:
- (7) No person, except a medical practitioner qualified as such, shall be qualified for appointment as member of an Insurance Committee by a county or town council unless he is a member of a local authority within the county under the Public Health (Scotland) Act, 1897, or of the town council, as the case may be; but this requirement shall not apply to women if women so qualified are not available:
- (8) Before submitting for approval a scheme prescribing areas to be assigned to district committees, the Insurance Committee of a county shall consult with the county council, or any committee thereof appointed for the purpose, and shall consider any representation received from them:
- (9) Where, owing to sparseness of population, difficulties of communication, or other special circumstances, they consider it desirable, an Insurance Committee shall have power, with the consent of the Scottish Insurance Commissioners, to modify or suspend any benefits for the administration of which they are responsible; but, where such modification or suspension takes place, provision shall be made by the Committee, with the like consent, for the increase of other benefits or the grant of one or more additional benefits to an amount equivalent to the value of the modification or suspension:
- (10) (a) If it appears to any county council that, having regard to the number of employed contributors resident in the county who are not members of any society approved under the foregoing provisions of this Act, it is desirable that steps should be taken for the establishment under the council of an approved society for the county (in this section referred to as a county society) the council

National Insurance Act of 1911

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may, at any time before the expiration of one year from the commencement of this Act, submit to the Scottish Insurance Commissioners a scheme for the establishment of a county society;

(b) The scheme may provided for—

(i) the representation of the council on the committee of management of the society;

(ii) the appointment of officers subject to the approval of the council;

(iii) the delegation of powers to committees;

(iv) the giving of security by means of a charge upon the general purposes rate or otherwise;

(v) the restriction of membership to insured persons resident in the county not being members of any other approved society;

(vi) the reduction of benefits below the minimum rates fixed by this Part of this Act; and

(vii) such other matters as may appear necessary, and in particular such further modifications of the provisions of this Part of this Act with respect to approved societies as may be required for the purpose of adapting those provisions to the case of a county society;

(c) Where such a scheme has been approved by the Scottish Insurance Commissioners, the provisions of the Scheme shall have effect, notwithstanding anything to the contrary in this Part of this Act; and, subject to those provisions, the county society shall be an approved society for all the purposes of this Part of this Act;

(d) A county council desirous of submitting a scheme under this section may, at any time after the passing of this Act, take such steps as appear necessary with a view to ascertaining what insured persons resident in the county are eligible and willing to become members of the proposed county society, and generally for the formation of the society;

(11) A person appointed in terms of the section of this Act relating to excessive sickness to hold an inquiry shall report to the authority appointing him, and any further action following on such inquiry which, in accordance with the provisions of that section, is to be or may be taken by the person making the inquiry, shall not be taken by him, but may be taken by that authority after consideration of the report, and that section shall be read and construed accordingly:

(12) Expenses incurred by a county council under this Part of this Act shall be defrayed out of the general purposes rate; provided that, notwithstanding anything contained in the Act of 1889, the ratepayers of a police burgh shall not be assessed by the county council for any such expenses unless the police burgh is, for



## National Insurance Act of 1911

the purposes of this Part of this Act, held to be within the county; and provided further that, with respect to every burgh within the meaning of the Act of 1889, which is, for the purposes of this Act, held to be within the county, subsection (3) and subsection (4) of section sixty, and section sixty-six, of the Act of 1889, shall, so far as applicable, have effect as if such expenses were expenditure therein mentioned:

(13) Expenses incurred by a town council under this Part of this Act (whether under requisition from the county council or otherwise) shall be defrayed out of the public health general assessment, but shall not be reckoned in any calculation as to the statutory limit of that assessment; and references to the borough fund or borough rate shall be construed accordingly:

(14) The expression "borough" and the expression "Urban district" mean a burgh or police burgh within the meaning of the Act of 1889, and the expressions "rural district" and "council of a rural district," unless inconsistent with the context, mean respectively a district of a county within the meaning of the said Act and the district committee thereof: Provided that the population limit prescribed for boroughs and urban districts in the subsection of this Act relating to the appointment of district committees for these areas shall not apply:

(15) The expression "Lord Chief Justice" means the Lord President of the Court of Session:

(16) The expression "county court" means the sheriff court; and, in lieu of an appeal from the county court upon any question of law, there shall be substituted an appeal from the sheriff upon any question of law in terms of subsection (17) (b) of the Second Schedule to the Workmen's Compensation Act, 1906: provided that the decision of either division of the Court of Session on such appeal shall be final:

(17) The expression "workhouse" means poorhouse; "coverture" means marriage; "levy any distress or execution" means use any diligence; "ejectment" means removing; "amount of judgment debt" means amount decerned for; "registrar of the county court" means court exercising jurisdiction in the proceedings; "certified midwife" means any midwife possessing such qualifications as may be prescribed; "public elementary school" means public school; "Public Health Acts" means the Public Health Acts, 1875 (Scotland) Acts, 1897 and 1907; "Local Loans Act, 1875" means the Local Authorities Loans (Scotland) Acts, 1891 and 1893; and "High Court" means

Court of Session;

## National Insurance Act of 1911

- (18) Unless inconsistent with the context, references to the elementary School Teachers' Superannuation Act, 1898, to the deferred annuity fund under that Act, and to the Board of Education, shall be construed, respectively, as references to section fourteen of the Education (Scotland) Act, 1908, <sup>8 Edw. 7, c. 63.</sup> and a scheme thereunder, to the Scottish Teachers' Superannuation Fund, and to the Scotch Education Department.

*Application to Ireland.*

81. This Part of this Act, in its application to Ireland, shall be subject to the following modifications:—

- (1) For the purpose of carrying this Part of this Act into effect in Ireland, there shall be constituted, as soon as may be after the passing of this Act, Commissioners for Ireland (to be called the Irish Insurance Commissioners), with a central office in Dublin, and with such branch offices in Ireland as the Treasury may think fit, and the Irish Insurance Commissioners, of whom one at least shall be a duly qualified medical practitioner, shall be appointed by the Treasury, and may appoint such officers, inspectors, referees, and servants for the purposes aforesaid as the Irish Insurance Commissioners, subject to the approval of the Treasury, may determine, and the provisions of this Part of this Act with respect to the payment of the salaries and remuneration of the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and with respect to the payment of the expenses incurred by the Treasury or the Insurance Commissioners in carrying this Part of this Act into effect shall, with the necessary modifications, apply to the payment of the salaries and remuneration of the Irish Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them and to the payment of expenses incurred by the Treasury or the Irish Insurance Commissioners in carrying this Part of this Act into effect in Ireland, and for the purpose aforesaid the Irish Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them shall respectively have all the like powers and duties as are by the provisions of this Act conferred and imposed on the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and references in those provisions to the Insurance Commissioners shall be construed as references to the Irish Insurance Commissioners:
- (2) All sums received from contributions under this Part of this Act in respect of insured persons resident in Ireland and all sums paid out of moneys provided by Parliament in respect of benefits under

## National Insurance Act of 1911

this Part of this Act to such persons and the expenses of administration of such benefits shall be paid into a fund to be called the Irish National Health Insurance Fund, under the control and management of the Irish Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and Insurance Committees for the purposes of such benefits and the administration of such benefits shall be paid out of that fund and the foregoing provisions of this Act with respect to the National Health Insurance Fund shall, with the necessary modifications, apply to the Irish National Health Insurance Fund accordingly:

- (3) The provisions of this Part of this Act conferring a right to exemption shall extend to any person employed in harvesting or other agricultural work who proves—

(a) that he is an Irish migratory laborer, that is to say, a person who, having a permanent home at some place in Ireland, has temporarily removed to some other place in Ireland or to Great Britain for the purpose of obtaining such employment; and

(b) that he ordinarily resides at such permanent home for not less than twenty-six weeks in the year and is not employed within the meaning of this Part of this Act whilst so resident; and any contributions paid in Great Britain by the employer of a person holding a certificate of exemption by virtue of this provision shall be transferred to the Irish Insurance Commissioners for the purpose of being carried to such account and being dealt with in such manner as may be prescribed by the regulations made in that behalf by the Irish Insurance Commissioners:

- (4) Employment in Ireland as an outworker, where the wages or other remuneration derived from the employment are not the principal means of livelihood of the person employed, shall be deemed to be included amongst the excepted employments specified in Part II of the First Schedule to this Act:

- (5) The reference to the Lord Chancellor shall be construed as a reference to the Lord Chancellor of Ireland;

The reference to the Lord Chief Justice shall be construed as a reference to the Lord Chief Justice of Ireland;

The reference to the Local Government Board, as regards the making of regulations with respect to payments out of the Local Taxation Account, shall be construed as a reference to the Lord Lieutenant, and other references to the Local Government Board shall be construed as references to the Local Government Board for Ireland, and the reference to the Local Taxation Account shall

## National Insurance Act of 1911

be construed as a reference to the Local Taxation (Ireland) Account:

- (6) A reference to the Housing of the Working Classes (Ireland) Acts, 1890 to 1908, shall be substituted for the reference to the Housing of the Working Classes Acts, 1890 to 1909, a reference to the Public Health (Ireland) Acts, 1878 to 1907, shall be substituted for the reference to the Public Health Acts and a reference to the rate or fund applicable to the purposes of the Public Health (Ireland) Acts, 1878 to 1907, shall be substituted for any reference to the borough rate or borough fund:

- (7)—(a) If it appears to any county council that, having regard to the number of employed contributors resident in the county who are not members of any society approved under the foregoing provisions of this Act it is desirable that steps should be taken by the council for the establishment of an approved society for the county under the council (in this section referred to as a county society), the council may, at any time before the expiration of one year from the commencement of this Act, submit to the Irish Insurance Commissioners a scheme for the establishment of a county society;

- (b) The scheme may provide for—

(i) the representation of the council on the committee of management of the society;

(ii) the appointment of officers subject to the approval of the council;

(iii) the delegation of powers to committees;

(iv) the giving of security by means of a charge upon the county fund or otherwise;

(v) the restriction of membership to insured persons resident in the county not being members of any other approved society;

(vi) the reduction of benefits below the minimum rates fixed by this Part of this Act; and

(vii) such other matters as may appear necessary, and in particular such further modifications of the provisions of this Part of this Act with respect to approved societies as may be required for the purpose of adapting those provisions to the case of a county society;

- (c) Where such a scheme has been approved by the Irish Insurance Commissioners, the provisions of the scheme shall have effect, notwithstanding anything to the contrary in this Part of this Act; and, subject to those provisions, the county society shall be an approved society for all the purposes of this Part of this Act;

- (d) A county council desirous of submitting a scheme under

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National Insurance Act of 1911

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this section may, at any time after the passing of this Act, take such steps as appear necessary with a view to ascertaining what insured persons resident in the county are eligible and willing to become members of the proposed county society, and generally for the formation of the society:

- (8) The provisions with respect to the appointment of Insurance Committees shall have effect, subject to the following modifications, namely:—

The number of members of an Insurance Committee shall be twenty-four, and of that number—

(a) twelve shall be appointed in such manner as may be prescribed by regulations of the Irish Insurance Commissioners so as to secure representation of the insured persons resident in the county or county borough who are members of approved societies, and who are deposit contributors, in proportion, as nearly as may be, to their respective numbers, and regulations so made shall provide for conferring on the approved societies which have members resident in the county or county borough the power of appointing representatives of such members, and, where an association of deposit contributors resident in the county or county borough has been formed under such regulations as aforesaid, for conferring on such association the power of appointing the representatives of the deposit contributors;

(b) eight (of whom at least one shall be a member of a local sanitary authority and at least two shall be women) shall be appointed by the council of the county or county borough; and

(c) four (of whom at least two shall be duly qualified medical practitioners) shall be appointed by the Irish Insurance Commissioners:

Provided that the Irish Insurance Commissioners may, where any part of the cost of sanatorium benefit is defrayed by the council of the county or county borough increase the representation of the council and make a corresponding diminution in the representation of the insured persons:

- (9) An insured person in Ireland shall not be entitled to medical benefit under this Part of this Act, and the provisions with respect to medical benefit shall not apply:

Provided that medical benefit for an insured person being a member of an approved society shall be deemed to be included amongst the additional benefits specified in Part II of the Fourth Schedule to this Act, and that such medical benefit when provided

National Insurance Act of 1911

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shall be administered by the Insurance Committee in accordance with the provisions of this Part of Act, unless the Irish Insurance Commissioners otherwise direct:

- (10) As respects employed contributors in Ireland, the employed rate shall be the rate specified in Part II of the Second Schedule to this Act, and the contributions by the contributors and contributions by the employers shall be at the rates specified in Part II instead of the rates specified in Part I of that schedule, and there shall be credited to the society of which any employed contributor in Ireland is a member or, if he is a deposit contributor, to his account in the Post Office fund, the difference between the amount of contributions actually paid by or in respect of him at the rate specified in Part II of the Second Schedule to this Act and the amount which would have been paid if those contributions had been at the rate specified in Part I of that schedule; and the amount of that difference shall be treated as having been expended on benefits and the proper proportion thereof shall accordingly be paid out of moneys provided by Parliament:
- (11) The foregoing provisions of this section as to the crediting of differences shall apply in the case of voluntary contributors resident in Ireland, with the modification that, where the voluntary rate is not the same as the employed rate, the difference to be credited shall be the difference between the amount of contributions actually paid at the voluntary rate and the amount which would have been paid if the contributor had been a voluntary contributor resident in Great Britain:
- Provided that, in the case of a married woman resident in Ireland becoming a voluntary contributor at reduced rates of benefit under the special provisions with respect to married women, the rate of contributions payable by her shall be one penny halfpenny a week instead of three pence a week, and the difference to be credited shall be one penny halfpenny a week accordingly;
- (12) In ascertaining the voluntary rate applicable to voluntary contributors in Ireland in cases where that rate is not the same as the employed rate, regard shall be had both to the provisions of this section as to the crediting of differences and to the proportion of benefits to be paid out of the contributions payable by or in respect of such contributors:
- (13) Rules of an approved society or Insurance Committee under this Part of this Act may provide for the inspection of medical relief registers by officers of the society or Committee at all reasonable times, and for the furnishing to the society or Committee of such medical certificates as may be necessary for the purposes of

## National Insurance Act of 1911

the administration of the benefits administered by the society or Committee, and for the payment by the society or Committee to duly qualified medical practitioners of such remuneration in respect of the furnishing of those certificates as the Irish Insurance Commissioners may sanction, and all payments so made by the society or Committee shall be treated as expenses of administering the benefits aforesaid:

- (14) If a grant is made to a county council or county borough council out of any sum made available under any other Act of the present session for the purposes of the provisions of or making grants in aid to sanatoria and other institutions for the treatment of tuberculosis or such other diseases as the Local Government Board may, with the approval of the Treasury, appoint, the council may, subject to the sanction of the Local Government Board, exercise for all or any of those purposes the powers given to them by Part II of the Tuberculosis Prevention (Ireland) Act, 1908, in 8 Edw. 7, c. 56 like manner as if those purposes were purposes authorized by that Part of that Act and any expenses of the council so far as not defrayed out of the grant shall be defrayed in manner provided by that Part of that Act:
- (15) For the purposes of proceedings in Ireland under the provisions of this Part of this Act relative to disputes, regulations 19 & 20 Vict. c. 102. of the Irish Insurance Commissioners may apply all or any of the provisions of the Common Law Procedure (Ireland) Act, 1856, with respect to arbitration.
- (16) The special provisions with respect to the reduction of contributions in cases where the employer is liable to pay wages during sickness shall have effect, subject to the modification that, where the rate of contributions payable by the employed contributor is one halfpenny a week, the weekly contributions payable by the employer shall be reduced by one penny halfpenny (or, if the employed contributor is a woman, one penny), and the weekly contributions payable by the employed contributor shall be reduced by one half penny:
- (17) In the special provisions as to persons becoming certified teachers, references to the Board of Education, to the Elementary School Teachers (Superannuation) Act, 1898, and to a public 42 & 43 Vict. c. 74. elementary school shall respectively be construed as references to the Superintendent of the Teachers' Pension Office, to the National School Teachers' (Ireland) Act, 1879, and to a national school, and any sums paid to the Superintendent of the Teachers' Pension Office in pursuance of those provisions shall be carried to the Pension Fund established

## National Insurance Act of 1911

under the last-mentioned Act and shall be dealt with in accordance with rules under that Act:

- (18) As respects insured persons in Ireland, "six-elevenths" shall be substituted for "four-sevenths" and (in the case of women) "four-ninths" shall be substituted for "one-half":
- (19) For the reference to the registrar of the county court, there shall be substituted a reference to a magistrate appointed under the Constabulary (Ireland) Act, 1836: c. 13
- (20) For references to a duly certified midwife, there shall be substituted references to a midwife having such qualifications as may be prescribed.

*Establishment of Commissioners for Wales.*

82.—(1) For the purpose of carrying this Part of this Act into effect in Wales, there shall be constituted, as soon as may be after the passing of this Act, Commissioners for Wales (to be called the Welsh Insurance Commissioners) with a central office in such town in Wales as the Treasury may determine, and with such branch offices in Wales as the Treasury may think fit, and the Welsh Insurance Commissioners, of whom one at least shall be a duly qualified medical practitioner, shall be appointed by the Treasury, and may appoint such officers, inspectors, referees, and servants for the purposes aforesaid as the Welsh Insurance Commissioners, subject to the approval of the Treasury, may determine, and the provisions of this Part of this Act with respect to the payment of the salaries and remuneration of the Insurance Commissioners, and the officers, inspectors, referees, and servants appointed by them, and with respect to the payment of the expenses incurred by the Treasury or the Insurance Commissioners in carrying this Part of this Act into effect shall, with the necessary modifications, apply to the payment of the salaries and remuneration of the Welsh Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and to the payment of expenses incurred by the Treasury or the Welsh Insurance Commissioners in carrying this Part of this Act into effect in Wales, and for the purpose aforesaid the Welsh Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them shall respectively have all the like powers and duties as are by the provisions of this Act conferred and imposed on the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and references in those provisions to the Insurance Commissioners shall be construed as references to the Welsh Insurance Commissioners.

(2) All sums received from contributions under this Part of this Act in respect of insured persons resident in Wales, and all sums paid out of moneys provided by Parliament in respect of benefits under this Part



## National Insurance Act of 1911

of this Act to such persons, and the expenses of administration of such benefits shall be paid into a fund to be called the Welsh National Health Insurance Fund, under the control and management of the Welsh Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and Insurance Committees for the purposes of such benefits and the administration of such benefits shall be paid out of that fund, and the foregoing provisions of this Act, with respect to the National Health Insurance Fund, shall, with the necessary modifications, apply to the Welsh National Health Insurance Fund accordingly.

(3) The powers of the Local Government Board with respect to the distribution of any sum available for the purpose of the provision of or making grants in aid to sanatoria and other institutions shall, as respects the part thereof apportioned to Wales, be exercised by the Welsh Insurance Commissioners.

(4) If before or within twelve months after the commencement of this Act there is established for Wales by royal charter an association for the purpose of providing sanatoria and other institutions for the treatment and prevention of tuberculosis or such other diseases as the Local Government Board, with the approval of the Treasury, may appoint, the Welsh Insurance Commissioners in making and the Treasury in approving grants from any such sum as is in the last preceding subsection mentioned shall have regard to the provision of such institutions which may have been made, or may be proposed to be made, by the association.

*Joint committee of Commissioners.*

83.—(1) There shall be constituted as soon as may be after the passing of this Act, in accordance with regulations to be made by the Treasury, a joint committee of the several bodies of Commissioners appointed for the purposes of this Part of this Act, consisting of such members of each such body selected in such manner as may be provided by the regulations and of a chairman and other members (not exceeding two in number) to be appointed by the Treasury, and the chairman shall not by reason of his office be incapable of being elected to or voting in the Commons House of Parliament.

(2) The joint committee may make such financial adjustments as may be necessary between the several funds under the control and management of the several bodies of Commissioners, and shall exercise and perform such powers and duties of the several bodies of Commissioners under this Part of this Act, either alone or jointly with any of those bodies, as may be provided by such regulations.

(3) Amongst the powers so exercisable by the joint committee shall be included a power of making regulations as to the valuation of societies and branches which have amongst their members persons resident in

## National Insurance Act of 1911

England, Scotland, Ireland, and Wales, or any two or any three of such parts of the United Kingdom, and the regulations so made shall require that, for the purposes of the provisions of this Part of this Act relating to valuations, surpluses, deficiencies and transfers, the members resident in each such part shall be treated as if they formed a separate society.

(4) Regulations made by the Treasury under this section shall be laid before Parliament as soon as may be after they are made, but, if an Address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, His Majesty in Council may annul the regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

## PART II

## UNEMPLOYMENT INSURANCE

*Right of workmen in insured trades to unemployment benefit.*

84.—Every workman who, having been employed in a trade mentioned in the Sixth Schedule to this Act (in this Act referred to as “an insured trade”), is unemployed, and in whose case the conditions laid down by this Part of this Act (in this Act referred to as “statutory conditions”) are fulfilled, shall be entitled, subject to the provisions of this Part of this Act, to receive payments (in this Act referred to as “unemployment benefit”) at weekly or other prescribed intervals at such rates and for such periods as are authorised by or under the Seventh Schedule to this Act, so long as those conditions continue to be fulfilled, and so long as he is not disqualified under this Act for the receipt of unemployment benefit.

Provided that unemployment benefit shall not be paid in respect of any period of unemployment which occurs during the six months following the commencement of this Act.

*Contributions by workmen, employers, and the Treasury.*

85.—(1) The sums required for the payment of unemployment benefit under this Act shall be derived partly from contributions by workmen in the insured trades and partly from contributions by employers of such workmen and partly from moneys provided by Parliament.

(2) Subject to the provisions of this Part of this Act, every workman employed within the United Kingdom in an insured trade, and every employer of any such workman, shall be liable to pay contributions at the rates specified in the Eighth Schedule to this Act.

(3) Except where the regulations under this Part of this Act otherwise

## National Insurance Act of 1911

prescribe, the employer shall, in the first instance, be liable to pay both the contribution payable by himself, and also on behalf of and to the exclusion of the workman, the contribution payable by such workman, and subject to such regulations, shall be entitled, notwithstanding the provisions of any Act or any contract to the contrary, to recover from the workman by deductions from the workman's wages or from any other payment due from him to the workman the amount of the contributions so paid by him on behalf of the workman.

(4) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages of or other payment due to the workman, or otherwise recover from the workman by any legal process the contributions payable by the employer himself.

(5) Subject to the provisions of this Part of this Act, the Board of Trade may make regulations providing for any matters incidental to the payment and collection of contributions payable under this Part of this Act, and in particular for—

- (a) payment of contributions by means of adhesive or other stamps, affixed to or impressed upon books or cards, or otherwise, and for regulating the manner, times and conditions in, at and under which such stamps are to be affixed and impressed or payments are otherwise to be made;
- (b) the issue, sale, custody, production, and delivery up of books or cards and the replacement of books or cards which have been lost destroyed or defaced.

(6) A contribution shall be made in each year out of moneys provided by Parliament equal to one-third of the total contributions received from employers and workmen during that year, and the sums to be contributed in any year shall be paid in such manner and at such times as the Treasury may determine.

*Statutory conditions for receipt of unemployment benefit.*

86. The statutory conditions for the receipt of unemployment benefit by any workman are—

- (1) that he proves that he has been employed as a workman in an insured trade in each of not less than twenty-six separate calendar weeks in the preceding five years;
- (2) that he has made application for unemployment benefit in the prescribed manner, and proves that since the date of the application he has been continuously unemployed;
- (3) that he is capable of work but unable to obtain suitable employment;
- (4) that he has not exhausted his right to unemployment benefit under this Part of this Act:

## National Insurance Act of 1911

Provided that a workman shall not be deemed to have failed to fulfil the statutory conditions by reason only that he has declined—

- (a) an offer of employment in a situation vacant in consequence of a stoppage of work due to a trade dispute; or
- (b) an offer of employment in the district where he was last ordinarily employed at a rate of wage lower, or on conditions less favourable, than those which he habitually obtained in his usual employment in that district, or would have obtained had he continued to be so employed; or
- (c) an offer of employment in any other district at a rate of wage lower or on conditions less favourable than those generally observed in such district by agreement between associations of employers and of workmen, or, failing any such agreement, than those generally recognised in such district by good employers.

*Disqualifications for unemployment benefit.*

87.—(1) A workman who has lost employment by reason of a stoppage of work which was due to a trade dispute at the factory, workshop, or other premises at which he was employed, shall be disqualified for receiving unemployment benefit so long as the stoppage of work continues, except in a case where he has, during the stoppage of work, become bona fide employed elsewhere in an insured trade.

Where separate branches of work which are commonly carried on as separate businesses in separate premises are in any case carried on in separate departments on the same premises, each of those departments shall, for the purposes of this provision, be deemed to be a separate factory or workshop or separate premises, as the case may be.

(2) A workman who loses employment through misconduct or who voluntarily leaves his employment without just cause shall be disqualified for receiving unemployment benefit for a period of six weeks from the date when he so lost employment.

(3) A workman shall be disqualified for receiving unemployment benefit whilst he is an inmate of any prison or any workhouse or other institution supported wholly or partly out of public funds, and whilst he is resident temporarily or permanently outside the United Kingdom.

(4) A workman shall be disqualified for receiving unemployment benefit while he is in receipt of any sickness or disablement benefit or disablement allowance under Part I. of this Act.

*Determination of claims.*

88.—(1) All claims for unemployment benefit under this Part of this Act, and all questions whether the statutory conditions are fulfilled in the case of any workman claiming such benefit, or whether those conditions continue to be fulfilled in the case of a workman in receipt of such benefit,

## National Insurance Act of 1911

or whether a workman is disqualified for receiving or continuing to receive such benefit, or otherwise arising in connection with such claims, shall be determined by one of the officers appointed under this Part of this Act for determining such claims for benefit (in this Act referred to as "insurance officers"):

Provided that—

- (a) in any case where unemployment benefit is refused or is stopped, or where the amount of the benefit allowed is not in accordance with the claim, the workman may require the insurance officer to report the matter to a court of referees constituted in accordance with this Part of this Act, and the court of referees after considering the circumstances may make to the insurance officer such recommendations on the case as they may think proper, and the insurance officer shall, unless he disagrees, give effect to those recommendations. If the insurance officer disagrees with any such recommendation, he shall, if so requested by the court of referees, refer the recommendation, with his reasons for disagreement, to the umpire appointed under this Part of this Act, whose decision shall be final and conclusive;
- (b) the insurance officer in any case in which he considers it expedient to do so may, instead of himself determining the claim or question, refer it to a court of referees who shall in such case determine the question, and the decision of the court of referees shall be final and conclusive.

(2) Nothing in this section shall be construed as preventing an insurance officer or umpire, or a court of referees, on new facts being brought to his or their knowledge, revising a decision or recommendation given in any particular case, but, where any such revision is made, the revised decision or recommendation shall have effect as if it had been an original decision or recommendation, and the foregoing provisions of this section shall apply accordingly, without prejudice to the retention of any benefit which may have been received under the decision or recommendation which has been revised.

(3) The Arbitration Act, 1889, shall not apply to proceedings under 52 & 53 Vict. this section, except so far as it may be applied by regulations c. 49. under this Part of this Act.

(4) For the purposes of proceedings under this section in Ireland, regulations may apply all or any of the provisions of the 19 & 20 Vict. Common Law Procedure (Ireland) Act, 1856, with respect to c. 102. arbitration.

*Appointment of umpire, insurance officers, inspectors, &c.*

89.—(1) For the purposes of this Part of this Act, an umpire may be

## National Insurance Act of 1911

appointed by His Majesty, and insurance officers shall be appointed by the Board of Trade (subject to the consent of the Treasury as to number) and the insurance officers shall be appointed to act for such areas as the Board direct.

(2) The Board of Trade may appoint such other officers, inspectors, and servants for the purposes of this Part of this Act as the Board may, with the sanction of the Treasury, determine, and there shall be paid out of moneys provided by Parliament to the umpire and insurance officers and to such other officers, inspectors, and servants, such salaries or remuneration as the Treasury may determine; and any expenses incurred by the Board of Trade in carrying this Part of this Act into effect to such amount as may be sanctioned by the Treasury shall be defrayed out of moneys provided by Parliament:

Provided that such sum as the Treasury may direct, not exceeding one-tenth of the receipts, other than advances by the Treasury, paid into the unemployment fund on income account shall, in accordance with regulations made by the Treasury, be applied as an appropriation in aid of money provided by Parliament for the purpose of such salaries, remuneration, and expenses.

*Courts of referees.*

90.—(1) A court of referees for the purposes of this Part of this Act shall consist of one or more members chosen to represent employers, with an equal number of members chosen to represent workmen, and a chairman appointed by the Board of Trade.

(2) Panels of persons chosen to represent employers and workmen respectively shall be constituted by the Board of Trade for such districts and such trades or groups of trades as the Board may think fit, and the members of a court of referees to be chosen to represent employers and workmen shall be selected from those panels in the prescribed manner.

(3) Subject as aforesaid, the constitution of courts of referees shall be determined by regulations made by the Board of Trade.

(4) The regulations of the Board of Trade may further provide for the reference to referees chosen from the panels constituted under this section, for consideration and advice, of questions bearing upon the administration of this Part of this Act, and for the holding of meetings of referees for the purpose.

(5) The Board of Trade may pay such remuneration to the chairman and other members of a court of referees and such travelling and other allowances (including compensation for loss of time) to persons required to attend before any such court, and such other expenses in connection with any referees, as the Board, with the sanction of the Treasury deter-

## National Insurance Act of 1911

mine, and any such payments shall be treated as expenses incurred by the Board of Trade in carrying this Part of this Act into effect.

*Regulations.*

91.—(1) The Board of Trade may make regulations for any of the purposes for which regulations may be made under this Part of this Act and the Schedules therein referred to, and for prescribing anything which under this Part of this Act or any such Schedules is to be prescribed, and—

- (a) for permitting workmen who are employed under the same employer partly in an insured trade and partly not in an insured trade to be treated with the consent of the employer as if they were wholly employed in an insured trade; and
- (b) for giving employers, and workmen, and the Board of Trade an opportunity of obtaining a decision by the umpire appointed under this Part of this Act on any question whether contributions under this Part of this Act are payable in respect of any workman or class of workmen, and for securing that a workman in whose case contributions have been paid in accordance with any such decision, shall, as respects any unemployment benefit payable in respect of those contributions, be treated as a workman employed in an insured trade, and for securing that employers and workmen shall be protected from proceedings and penalties in cases where, in accordance with any such decision, they have paid or refrained from paying contributions; and
- (c) for prescribing the evidence to be required as to the fulfilment of the conditions and qualifications for receiving or continuing to receive unemployment benefit, and for that purpose requiring the attendance of workmen at such offices or places and at such times as may be required; and
- (d) for prescribing the manner in which claims for unemployment benefit may be made and the procedure to be followed on the consideration and examination of claims and questions to be considered and determined by the insurance officers, courts of referees, and umpire, and the mode in which any question may be raised as to the continuance, in the case of a workman in receipt of unemployment benefit, of such benefit, and for making provision with respect to the appointment of a deputy umpire in the case of the unavoidable absence or incapacity of the umpire; and
- (e) with respect to the payment of contributions and benefits during any period intervening between any application for the decision of any question or any claim for benefit, and the final determination of the question or claim; and
- (f) for providing that, where any workmen are employed in or for

## National Insurance Act of 1911

the purposes of the business of any person, but are not actually employed by that person, that person may be treated for the purposes of this Part of this Act as their employer instead of their actual employer, and for allowing that person to deduct from any payments made by him to the actual employer any sums paid by him as contributions on behalf of the workmen, and for allowing the actual employer to recover the like sums from the workmen; and

generally for carrying this Part of this Act into effect, and any regulations so made shall have effect as if enacted in this Act.

Any regulations made under this section for giving an opportunity of obtaining a decision of the umpire may be brought into operation as soon as may be after the passing of this Act.

(2) The regulations may, with the concurrence of the Postmaster-General, provide for enabling claimants of unemployment benefit to make their claims for unemployment benefit under this Act through the Post Office, and for the payment of unemployment benefit through the Post Office.

(3) All regulations made under this section shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new regulation.

*Unemployment fund.*

92.—(1) For the purposes of this Part of this Act, there shall be established under the control and management of the Board of Trade a fund called the unemployment fund, into which shall be paid all contributions payable under this Part of this Act by employers and workmen and out of moneys provided by Parliament, and out of which shall be paid all claims for unemployment benefit and any other payments which under this Part of this Act are payable out of the fund.

(2) The accounts of the unemployment fund shall be audited by the Comptroller and Auditor-General in such manner as the Treasury may direct.

(3) Any moneys forming part of the unemployment fund may from time to time be paid over to the National Debt Commissioners and by them invested in accordance with regulations made by the Treasury in any securities which are for the time being authorized by Parliament as investments for savings banks moneys.



## National Insurance Act of 1911

(4) The National Debt Commissioners shall present to Parliament annually an account of the securities in which moneys forming part of the said fund are for the time being invested.

*Treasury advances.*

93.—(1) The Treasury may out of the Consolidated Fund or the growing produce thereof advance on the security of the unemployment fund any sums required for the purpose of discharging the liabilities of that fund under this Part of this Act: Provided that the total amount of advances outstanding at any time shall not exceed three million pounds.

(2) If, whilst any part of any advance is outstanding it appears to the Treasury that the unemployment fund is insolvent, the Board of Trade shall, if the Treasury so direct, by order, make such temporary modifications in any of the rates of contribution, or the rates or periods of unemployment benefit, and during such period, as the Board of Trade think fit, and as will on the whole, in the opinion of the Treasury, be sufficient to secure the solvency of the unemployment fund:

Provided that no order made under this subsection shall reduce the weekly rate of unemployment benefit below the sum of five shillings, or shall increase the rates of contribution from employers or workmen by more than one penny per workman per week, or increase those rates unequally as between employers and workmen, and no such order shall remain in force more than three months after all the advances and interest thereon have been repaid, or come into force until one month after it is made.

(3) An order under this section shall not be made so as to be in force at any time while any previous order made under this section is in force.

(4) On any such order being made, the Board of Trade shall cause the order, together with a special report as to the reasons for making the order, to be laid before Parliament.

(5) The Treasury may, for the purpose of providing for the issue of sums out of the Consolidated Fund under this section, or for the repayment to that fund of all or any part of the sums so issued, or for paying off any security issued under this section, so far as that payment is not otherwise provided for, borrow money by means of the issue of Exchequer bonds or Treasury bills, and all sums so borrowed shall be paid into the Exchequer.

(6) The principal of and interest on any Exchequer bonds issued under this section shall be charged on and payable out of the Consolidated Fund of the United Kingdom or the growing produce thereof.

(7) Notwithstanding any thing in any other Act, money in the hands of the National Debt Commissioners for the reduction of the National Debt shall not be applied to purchasing, reducing, or paying off any Exchequer bonds or Treasury bills issued under this section.

## National Insurance Act of 1911

*Refund of part of contributions paid by employer in the case of workmen continuously employed.*

94.—(1) The Board of Trade shall, on the application of any employer made within one month after the termination of any calendar year, or other prescribed period of twelve months, refund to such employer out of the unemployment fund a sum equal to one-third of the contributions (exclusive of any contributions refunded to him under any other provisions of this Part of this Act) paid by him on his own behalf during that period in respect of any workman who has been continuously in his service through the period, and in respect of whom not less than forty-five contributions have been paid during the period.

(2) For the purpose of meeting any change in the period for which any refund of contributions is to be made under the foregoing provisions of this section, or for the purpose of making provision for any period which may elapse between the date on which contributions commence to be payable under this Part of this Act and the date on which the first period for the refund of contributions under the foregoing provisions of this section commences, the Board of Trade may, so far as necessary for the purpose, apply the provisions of this section to any period less than twelve months, subject to such proportionate reduction of the number of contributions required as they direct, and this section shall take effect as regards any such period of less than twelve months as so applied.

*Repayment of part of contributions by workmen in certain cases.*

95. (1) If it is shown to the satisfaction of the Board of Trade by any workman or his personal representatives that the workman has paid contributions in accordance with the provisions of this Part of this Act in respect of five hundred weeks or upwards, and that the workman has reached the age of sixty, or before his death had reached the age of sixty the workman or his representatives shall be entitled to be repaid the amount, if any, by which the total amount of such contributions have exceeded the total amount received by him out of the unemployment fund under this Act, together with compound interest at the rate of two and a half per cent. per annum calculated in the prescribed manner.

(2) A repayment to a workman under this section shall not affect his liability to pay contributions under this Part of this Act, and, if after any such repayment he becomes entitled to unemployment benefit, he shall be treated as having paid in respect of the period for which the repayment has been made the full number of contributions which is most nearly equal to five-eighths of the number of contributions actually paid during that period.

*Refund of contributions paid in respect of workmen working short time.*

96.—(1) If any employer satisfies the Board of Trade that during any

## National Insurance Act of 1911

period of depression in his business workmen employed by him have been systematically working short time, and that during such period he has paid contributions under this Part of this Act on behalf of such workmen, as well as on his own behalf, without recovering such contributions from such workmen either by way of deductions from wages or otherwise, there shall be refunded to him out of the unemployment fund, in accordance with regulations made by the Board of Trade, the contributions so paid by him in respect of those workmen (including those paid on behalf of the workmen as well as those paid on his own behalf), for the period or such part thereof as in the circumstances may seem just:

Provided that, except in a case where the working of short time has been effected by stopping the work for some day in the week which has been usually recognised as a working day of at least four hours in the trade and district, no such refund shall be made in respect of any workmen for any week in which the hours of work have exceeded five-sixths of the number usually recognised as constituting a full week's work at that time in the trade and district.

(2) Any employer who desires to take advantage of this section may make an application to the Board of Trade with a view to obtaining their ruling as to the circumstances under which, and the means by which, he proposes to effect a reduction of working hours, and the Board of Trade may, if they think fit, on the necessary information being supplied, give their ruling as to whether the circumstances are such, and the proposed means of reducing working hours are such, as to satisfy the requirements of this section.

*Saving for occasional employment in rural neighbourhoods.*

97. Where a workman is employed in a district which is rural in its character, and the workman usually follows in that district some occupation other than an insured trade, and is employed in an insured trade occasionally only, contributions under this Part of this Act shall not be payable in respect of the workman, except in cases where the employer and the workman agree that contributions shall be payable notwithstanding this provision.

*Payment of contributions in case of Reservists or Territorials during training.*

98. Where a man of the Naval Reserves, the Army Reserve, or the Territorial Force, is being trained and is in receipt of pay out of the moneys provided by Parliament for Navy or Army services, and immediately before the training was employed in an insured trade, he shall, for the purposes of this Part of this Act, be deemed, whilst so training, to be in the employment of the Crown in an insured trade.

## National Insurance Act of 1911

*Provisions with respect to workmen engaged through labour exchanges.*

99.—(1) The Board of Trade may, in such cases and on such conditions as the Board may prescribe, make an arrangement with any employer liable to pay contributions under any part of this Act, whereby, in respect of workmen engaged by him through a labour exchange, or in his employ at the date of such arrangement, the performance of all or any of the duties required under any part of this Act to be performed by the employer in respect of those workmen, whether on his own behalf or on behalf of the workmen, shall be undertaken on behalf of the employer by the labour exchange, and whereby in respect of such workmen different periods of employment, whether of the same workmen or different workmen, may, for the purposes of the employer's contributions under this Part of this Act, but not for the purposes of a refund of any part of the employer's contributions, be treated as a continuous employment of a single workman.

(2) Where any such arrangement has been made, all the periods of employment during which a workman engaged through a labour exchange is employed by one or more employers with whom such an arrangement has been made, may, subject to regulations made by the Board of Trade, on the application of the workman, be treated for the purposes of his contributions under this Part of this Act as a continuous period of employment under one employer, and those regulations may provide for the refund of part of his contributions under this Part of this Act accordingly.

*Subsidiary provisions.*

100.—(1) If the repeated failure of any insured workman to obtain or retain employment appears to the insurance officer to be wholly or partly due to defects in skill or knowledge, the insurance officer may, if he thinks fit, for the purpose of testing the skill or knowledge of the workman, offer to arrange for the attendance of the workman at a suitable place for the purpose, and may, out of the unemployment fund, pay all or any of the expenses incidental to such attendance.

If the workman fails or refuses either to avail himself of the offer, or to produce satisfactory evidence of his competence, or if as a result of the test the insurance officer considers that the skill or knowledge of the workman is defective, and that there is no reasonable prospect of such defects being remedied, such facts shall be taken into consideration in determining what is suitable employment for the workman.

If in any case as a result of the test the insurance officer considers that the skill or knowledge of the workman is defective, but that there is a reasonable prospect of the defects being remedied by technical instruction, the insurance officer, may, subject to any directions given by the Board of Trade, pay out of the unemployment fund all or any of the ex-

## National Insurance Act of 1911

penses incidental to the provision of the instruction, if he is of opinion that the charge on the unemployment fund in respect of the workman is likely to be decreased by the provision of the instruction.

(2) The regulations of the Board of Trade made under this Part of this Act shall provide for the return to a workman who is not a workman in an insured trade and to his employer of any contributions paid by them respectively under the belief that the workman was a workman in an insured trade, subject, in the case of the workman's contributions, to the deduction of any amount received by him in respect of unemployment benefit under a similar belief.

(3) Where under regulations made by the Board of Trade any sum has been paid out of the unemployment fund by way of reward for the return of a book or card which has been lost, the person responsible for the custody of the book or card at the time of its loss shall be liable to repay the sum so paid, not exceeding one shilling in respect of any one occasion.

*Offences and proceedings for recovery of contributions, &c.*

101.—(1) If for the purpose of obtaining any benefit or payment under this Part of this Act, either for himself or for any other person, or for the purpose of avoiding any payment to be made by himself under this Part of this Act, or enabling any other person to avoid any such payment, any person knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding three months, with or without hard labour.

(2) If any employer or workman has failed to pay any contributions which he is liable under this Part of this Act to pay, or if any employer or workman or any other person refuses or neglects to comply with any of the requirements of this Part of this Act, or the regulations made thereunder, he shall, for each offence, be liable on summary conviction to a fine not exceeding ten pounds, and also, where the offence is failure or neglect to make any contribution under this Part of this Act, to pay to the unemployment fund a sum equal to three times the amount which he has refused or neglected to pay (not exceeding five pounds), which sum, when paid, shall be treated as a payment in satisfaction of the contributions which he has so refused or neglected to pay.

(3) Proceedings under the foregoing provisions of this section shall not be instituted except by, or with the consent of, the Board of Trade, and may be commenced at any time within three months of the date at which the offence comes to the knowledge of the Board of Trade.

(4) Nothing in this section shall be construed as preventing the Board of Trade from recovering any sums due to the unemployment fund by means of civil proceedings, and all such sums shall be recoverable in such proceedings as debts due to the Crown.

## National Insurance Act of 1911

(5) If it is found at any time that a person has been in receipt of unemployment benefit under this Part of this Act whilst the statutory conditions were not fulfilled in his case, or whilst he was disqualified for receiving unemployment benefit, he shall be liable to repay to the unemployment fund any sums paid to him in respect of unemployment benefit whilst the statutory conditions were not fulfilled, or whilst he was disqualified for receiving the benefit, and the amount of such sums may be recovered as a debt due to the Crown.

(6) In any proceedings under this section, or in any proceedings involving any question as to the payment of contributions under this Part of this Act, or for the recovery of any sums due to the unemployment fund, the decision of the umpire appointed under this Part of this Act on any question arising, whether the trade in which the workman is or has been employed is an insured trade or not shall be conclusive for the purpose of those proceedings, and, if no such decision has been obtained and the decision of the question is necessary for the determination of the proceedings, the question shall be referred, in accordance with the regulations made under this Part of this Act, to the umpire for the purpose of obtaining such a decision.

*Periodical revision of rates of contribution.*

102. If at any time after the expiration of seven years from the commencement of this Act it appears to the Board of Trade that the unemployment fund is insufficient or more than sufficient to discharge the liabilities imposed upon the fund under this Part of this Act, or that the rates of contribution are excessive or deficient as respects any particular insured trade, or any particular branch of any such trade, the Board may, with the sanction of the Treasury, by special order made in manner hereinafter provided revise the rates of contribution of employers and workmen under this Part of this Act, and any such order may, if the Board think fit, prescribe different rates of contribution for different insured trades or branches thereof, and, where any such order is made, the rates prescribed by the order shall, as from such date as may be specified in the order, be substituted as respects trades or branches thereof to which it relates for the rates prescribed by this Act:

Provided that, where such a revision has been made, no further revision under this section shall be made before the expiration of seven years from the last revision, and that no order under this section shall increase the rates of contribution from employers or workmen by more than one penny per workman per week above the rates specified in the Eighth Schedule to this Act, or shall vary such rates unequally as between employers and workmen.

*Power to extend to other trades.*

103. If it appears to the Board that it is desirable to extend the provisions of this Part of this Act to workmen in any trade other than an insured trade, or to vary the definition of "workman" with respect to the age of the persons included therein, either generally or for any particular insured trade, or any particular branch of any trade, the Board may, with the consent of the Treasury, make, in manner hereinafter provided, a special order extending this Part of this Act to such workmen or so varying the definition of "workman," as the case may be, either without modification or subject to such modifications of rates of contribution or rates or periods of benefit as may be contained in the order, and, on any such order being made, this Part of this Act shall, subject to the modifications (if any) contained in the order, apply as if the trade mentioned in the order were an insured trade, or as if the definition of "workman" were varied in accordance with the order, as the case may be, and as if the rates of contribution and the rates and periods of benefit mentioned in the order were the rates of contribution and the rates and periods of benefit provided by this Part of this Act in respect of such trade:

Provided that no such order shall be made if the person holding the inquiry in relation to the order reports that the order should not be made, or if the order would, in the opinion of the Treasury, increase the contribution to the unemployment fund out of moneys provided by Parliament to a sum exceeding one million pounds a year before the expiration of three years from the making of the order, and that the rates of contribution mentioned in the order shall not exceed the rates specified in the Eighth Schedule to this Act, and shall be imposed equally as between employers and workmen.

*Exclusive of subsidiary occupations.*

104. The Board of Trade may, if in any case they consider that it is desirable, by special order exclude from the occupations which are to be deemed employment in an insured trade for the purpose of this Part of the Act—

- (a) Any occupation which appears to them to be common to insured and uninsured trades alike, and ancillary only to the purposes of an insured trade; and
  - (b) Any occupation which appears to them to be an occupation in a business which, though concerned with the making of parts or the preparation of materials for use in connection with an insured trade, is mainly carried on as a separate business or in connection with trades other than insured trades;
- and, on any such order being made, the occupation to which the order

## National Insurance Act of 1911

relates shall not be treated as employment in an insured trade for the purposes of this Part of this Act.

Any special order made under this section may be made so as to cover one or more occupations. The provisions of this Part of this Act as to the laying of regulations before Parliament and the presentation of an Address thereon shall apply to special orders made under this section.

*Arrangements with associations of workmen in insured trade who make payments to members whilst unemployed.*

105.—(1) The Board of Trade may, on the application of any association of workmen the rules of which provide for payments to its members, being workmen in an insured trade, or any class thereof, whilst unemployed, make an arrangement with such association that, in lieu of paying unemployment benefit under this Part of this Act to workmen who prove that they are members of the association, there shall be repaid periodically to the association out of the unemployment fund such sum as appears to be, as nearly as may be, equivalent to the aggregate amount which such workmen would have received during that period by way of unemployment benefit under this Part of this Act if no such arrangement had been made, but in no case exceeding three-fourths of the amount of the payments made during that period by the association to such workmen as aforesaid whilst unemployed.

(2) The council or other governing body of any association of workmen which has made such an arrangement as aforesaid shall be entitled to treat the contributions due from any of its members to the unemployment fund under this Part of this Act, or any part thereof, as if such contributions formed part of the subscriptions payable by those members to the association, and, notwithstanding anything in the rules of the association to the contrary, may reduce the rates of subscription of those members accordingly.

(3) For the purpose of determining whether a workman has exhausted his right to unemployment benefit under this Part of this Act, the amount of any sum which, but for this section, would have been paid to him by way of unemployment benefit shall be deemed to have been so paid.

(4) The Board of Trade may make regulations for giving effect to this section, and for referring to the umpire appointed under this Part of this Act any question which may arise under this section.

(5) The fact that persons other than workmen can be members of an association shall not prevent the association being treated as an association of workmen for the purposes of this section, if the association is substantially an association of workmen.



*Repayments to associations who make payments to persons whether workmen in insured trade or not, whilst unemployed.*

106.—(1) The Board of Trade may, with the consent of the Treasury, and on such conditions and either annually or at such other intervals as the Board may prescribe, repay out of moneys provided by Parliament to any association of persons not trading for profit the rules of which provide for payments to persons whilst unemployed, whether workmen in an insured trade or not, such part (in no case exceeding one-sixth) as they think fit, of the aggregate amount which the association has expended on such payments during the preceding year or other prescribed period, exclusive of the sum (if any) repaid to the association in respect of such period in pursuance of an arrangement under the last foregoing section, and exclusive, in the case of payments which exceed twelve shillings a week, of so much of those payments as exceeds that sum.

(2) No repayment shall be made under this section in respect of any period before the expiration of six months from the commencement of this Act.

(3) The Board of Trade may make regulations for giving effect to this section, and for determining the mode in which questions arising under this section shall be settled.

*Interpretation and application.*

107.—(1) For the purposes of this Part of this Act—

The expression “workman” means any person of the age of sixteen or upwards employed wholly or mainly by way of manual labour, who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, is oral or in writing, and in relation to a person whilst unemployed means a person who, when employed, fulfilled the conditions aforesaid, but does not include an indentured apprentice;

Contributions made by an employer on behalf of a workman shall be deemed to be contributions by the workman;

Two periods of unemployment of not less than two days each, separated by a period of not more than two days, during which the workman has not been employed for more than twenty-four hours or two periods of unemployment of not less than one week each, separated by an interval of not more than six weeks, shall be treated as a continuous period of unemployment, and the expression “continuously unemployed” shall have a corresponding meaning;

Temporary work provided by a central body or distress committee under the Unemployed Workmen Act, 1905, or towards Edw. 7, c. 18. the provision of which any such central body or distress committee has contributed under that Act, shall not be deemed to be employment in an insured trade;

## National Insurance Act of 1911

A workman shall not be deemed to be unemployed whilst he is following any remunerative occupation in an insured trade, or whilst he is following any other occupation from which he derives any remuneration or profit greater than that which he would derive from the receipt of unemployment benefit under this Part of this Act;

A workman shall not, for the purposes of contributions, be deemed to be employed in any period in respect of which he receives no remuneration from his employer, notwithstanding that he continues during such period in his employment;

The expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any persons, whether workmen in the employment of the employer with whom the dispute arises or not.

(2) In determining any question as to whether any trade in which a workman is or has been employed is an insured trade or not, regard shall be had to the nature of the work in which the workman is engaged rather than to the business of the employer by whom he is employed.

(3) This Part of this Act shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person, except to such of those workmen as are serving in an established capacity in the permanent service of the Crown, subject, however, to such modifications as may be made therein by Order in Council for the purpose of adapting the provisions of this Part of this Act to the case of such workmen.

(4) If the Board of Trade are satisfied that any class of workmen are, having regard to their claim to pension or to the other terms of their service, in as permanent a position as that of persons serving in an established capacity in the permanent service of the Crown, the Board of Trade may exempt that class of persons from the provisions of this Part of this Act, and any persons so exempt shall not be deemed to be workmen.

## PART III

## GENERAL

*Provisions as to stamps.*

108. Stamps required for the purposes of this Act shall be prepared and issued in such manner as the Commissioners of Inland Revenue, with the consent of the Treasury, may direct, and <sup>54 & 55 Vict.</sup> the said Commissioners may, by regulations in accordance <sup>c. 38.</sup> with the provisions of Part I. of this Act relating to regulations by the

## National Insurance Act of 1911

Insurance Commissioners, provide for applying, with the necessary adaptations, as respects such stamps, all or any of the provisions (including penal provisions) of the Stamp Duties Management Act, 8 Edw. 7, c. 48.1891, as amended by any subsequent Act, and section sixty-five of the Post Office Act, 1908, and may with the consent of the Postmaster-General provide for the sale of such stamps through the Post Office.

*Outdoor relief.*

109. In granting outdoor relief to a person in receipt of or entitled to receive any benefit under this Act, a board of guardians shall not take into consideration any such benefit, except so far as such benefit exceeds five shillings a week.

*Priority of claims for contributions due by bankrupt employers.*

110.—(1) There shall be included among the debts which, under section one of the Preferential Payments in Bankruptcy Act, 1888, and section two hundred and nine of the Companies (Consolidation) Act, 1908, are, 51 & 52 Vict. c. 62. in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up, to be 8 Edw. 7, c. 69. paid in priority to all other debts, all contributions payable under this Act by the bankrupt or the company in respect of employed contributors or workmen in an insured trade during the four months before the date of the receiving order, or, as the case may be, the commencement of the winding up or the winding-up order, and 46 & 47 Vict. c. 52. those Acts shall have effect accordingly, and formal proof of the debts to which priority is given under this section shall not be required except in cases where it may otherwise be provided by rules made under the Bankruptcy Act, 1883, or the Companies (Consolidation) Act, 1908.

(2) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such contributions as aforesaid 50 & 51 Vict. c. 43. shall, if payable in respect of a miner, have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.

(3) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company. 38 & 39 Vict. c. 26.

(4) In the application of this section to Scotland, a reference to section three of the Bankruptcy (Scotland) Act, 1875, and the respective dates therein mentioned shall be substituted for the reference to section one of the Preferential Payments in Bankruptcy Act, 1888, and the date of the receiving order; and an Act 19 & 20 Vict. c. 79. of Sederunt under the Bankruptcy Amendment (Scotland)

## National Insurance Act of 1911

Act, 1856, shall be substituted for rules under the Bankruptcy Act, 1883.

(5) In the application of this section to Ireland a reference to section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, shall be substituted for the reference to section one of the Preferential Payments in Bankrupt Act, 1888; and a reference to general orders made under the first mentioned Act shall be substituted for the reference to rules made under the Bankruptcy Act, 1883; and any reference to a bankrupt shall include a reference to an arranging debtor; and the reference to the receiving order shall be construed as a reference to the order of adjudication in the case of a bankrupt, or to the filing of the petition for arrangement in the case of an arranging debtor.

*Benefits to be inalienable.*

111. Every assignment of, or charge on, and every agreement to assign or charge, any of the benefits conferred by this Act shall be void, and, on the bankruptcy of any person entitled to any such benefit, the benefit shall not pass to any trustee or other person acting on behalf of his creditors.

*Powers of inspectors.*

112.—(1) An inspector appointed under this Act shall, for the purposes of the execution of this Act, have power to do all or any of the following things, namely:—

- (a) to enter at all reasonable times any premises or place, other than a private dwelling-house not being a workshop, where he has reasonable grounds for supposing that any employed contributors or workmen in an insured trade are employed;
- (b) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are complied with in any such premises or place;
- (c) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Act, every person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an employed contributor or workman in an insured trade, and to require every such person to be so examined, and to sign a declaration of the truth of the matters in respect of which he is so examined;
- (d) to exercise such other powers as may be necessary for carrying this Act into effect.

(2) The occupier of any such premises or place and any other person employing any employed contributor or workman in an insured trade, and the servants and agents of any such occupier or other person, and any employed contributor or workman in an insured trade shall furnish to

any inspector all such information and shall produce for inspection all such registers, books, cards, and other documents as the inspector may reasonably require.

(3) If any person wilfully delays or obstructs an inspector in the exercise of any power under this section or fails to give such information or to produce such documents as aforesaid, or conceals or prevents or attempts to conceal or prevent any person from appearing before or being examined by an inspector, he shall be liable on summary conviction to a fine not exceeding five pounds:

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

(4) Where any such premises or place are liable to be inspected by inspectors or other officers, or are under the control, of some other Government department, the Insurance Commissioners or Board of Trade may make arrangements with that other Government department for any of the powers and duties of inspectors under this section being carried out by inspectors or other officers of such other Government department, and, where such an arrangement is made, such inspectors and officers shall have all the powers of an inspector under this section.

(5) Every inspector shall be furnished with the prescribed certificate of his appointment, and on applying for admission to any premises for the purposes of this Act shall, if so required, produce the said certificate to the occupier.

*Procedure for making special orders.*

113.—(1) Sections eighty and eighty-one of the Factory and Workshop Act, 1901, relating to the making of regulations under that Act, as set out and adapted in the Ninth Schedule to this Act, shall apply to special orders made under this Act.

(2) Before a special order (other than a special order excluding any occupation from the occupations which are to be deemed employment in an insured trade) comes into force, it shall be laid before each House of Parliament for a period of not less than thirty days during which the House is sitting, and, if either of those Houses before the expiration of those thirty days presents an Address to His Majesty against the order or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new order.

*Provisions as to birth certificates.*

114. Where, for the purposes of this Act, the age of any person is required to be proved by the production of a certificate of birth, any person shall, on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local

## National Insurance Act of 1911

Government Board for England, Scotland, or Ireland, as the case may be, and, on payment of a fee of sixpence, be entitled to obtain a certified copy of the entry of the birth of that person in the birth register, under the hand of the registrar or superintendent registrar having the custody thereof, and forms for such requisition shall on request be supplied without any charge by every registrar of births and deaths and by every superintendent registrar.

*Short title and commencement.*

115. This Act may be cited as the National Insurance Act, 1911, and shall, save as otherwise expressly provided by this Act, come into operation on the fifteenth day of July nineteenth hundred and twelve:

Provided that His Majesty in Council may, should necessity arise, substitute some subsequent date or dates not being later than the first day of January nineteen hundred and thirteen as respects the provision of this Act relating to health insurance, and not being later than the first day of October nineteen hundred and twelve as respects the provisions of this Act relating to unemployment insurance.

**SCHEDULES****FIRST SCHEDULE****Sections 1 and 81****PART I****EMPLOYMENTS WITHIN THE MEANING OF PART I OF THIS ACT RELATING TO  
HEALTH INSURANCE**

(a) Employment in the United Kingdom under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise, or, except in the case of a contract of apprenticeship, without any money payment.

(b) Employment under such a contract as aforesaid as master or a member of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner, or, if there is more than one owner, the managing owner or manager, resides or has his principal place of business in the United Kingdom.

## National Insurance Act of 1911

(c) Employment as an outworker (that is to say, a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials for the purposes of the trade or business of the last-mentioned person), unless excluded by a special order made by the Insurance Commissioners, and any such order may exclude outworkers engaged in work of any class, or outworkers of any class or description specified in the order, or may defer the commencement of this Act as respects all outworkers, and the person who gave out the articles or materials shall, in relation to the person to whom he gave them out, be deemed to be the employer.

(d) Employment in the United Kingdom in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment (or in Scotland any contract of letting to hire) in consideration of the payment of a fixed sum or a share in the earnings or otherwise, in which case the owner shall, for the purposes of Part I of this Act, be deemed to be the employer.

## PART II

## EXCEPTIONS

(a) Employment in the naval or military service of the Crown, including service in Officers' Training Corps, except as otherwise provided in Part I of this Act.

(b) Employment under the Crown or any local or other public authority where the Insurance Commissioners certify that the terms of the employment are such as to secure provision in respect of sickness and disablement on the whole not less favourable than the corresponding benefits conferred by Part I of this Act.

(c) Employment as a clerk or other salaried official in the service of a railway or other statutory company, or of a joint committee of two or more such companies, where the Insurance Commissioners certify that the terms of employment, including his rights in such superannuation fund as is hereinafter mentioned, are such as to secure provision in respect of sickness and disablement, on the whole, not less favourable than the corresponding benefits conferred by Part I of this Act, and the person so employed is entitled to rights in a superannuation fund established by Act of Parliament for the benefit of persons in such employment, or in Ireland is entitled to rights in any such superannuation fund or in any railway superannuation fund which may be approved by the Insurance Commissioners.

## National Insurance Act of 1911

(d) Employment as a teacher to whom the Elementary School Teachers Superannuation Act, 1898, or a scheme under section fourteen of the Education (Scotland) Act, 1908, or the National School Teachers (Ireland) Act, 1879, applies, or, in the event of any similar enactment being hereafter passed as respects teachers or any class of teachers (other than teachers in public elementary schools), as a teacher to whom such enactment applies.

(e) Employment as an agent paid by commission or fees or a share in the profits, or partly in one and partly in another such ways, where the person so employed is mainly dependent for his livelihood on his earnings from some other occupation, or where he is ordinarily employed as such agent by more than one employer, and his employment under no one of such employers is that on which he is mainly dependent for his livelihood.

(f) Employment in respect of which no wages or other money payment is made where the employer is the occupier of an agricultural holding and the employed person is employed thereon, or where the person employed is the child of, or is maintained by, the employer.

(g) Employment otherwise than by way of manual labour and at a rate of remuneration exceeding in value one hundred and sixty pounds a year, or in cases where such employment involves part-time service only, at a rate of remuneration which in the opinion of the Insurance Commissioners, is equivalent to a rate of remuneration exceeding one hundred and sixty pounds a year for the whole-time service.

(h) Employment of a casual nature otherwise than for the purposes of the employer's trade or business, and otherwise than for the purposes of any game or recreation where the persons employed are engaged or paid through a club, and in such case the club shall be deemed to be the employer.

(i) Employment of any class which may be specified in a special order as being of such a nature that it is ordinarily adopted as subsidiary employment only and not as the principal means of livelihood.

(j) Employment as an outworker where the person so employed is the wife of an insured person and is not wholly or mainly dependent for her livelihood on her earnings in such employment.

(k) Employment as a member of the crew of a fishing vessel where the members of such crew are remunerated by shares in the profits or the gross earnings of the working of such vessel in accordance with any custom or practice prevailing at any port if a special order is made for the purpose by the Insurance Commissioners, and the particular custom or practice prevailing at the port is one to which the order applies.

(l) Employment in the service of the husband or wife of the employed person.



## SECOND SCHEDULE

## Sections 4 and 81

## RATES OF CONTRIBUTION UNDER PART I OF THIS ACT RELATING TO HEALTH INSURANCE

## PART I

## EMPLOYED RATE

In the case of men.....	7d. a week.
" " " " women.....	6d. "

## CONTRIBUTIONS BY EMPLOYERS AND EMPLOYED CONTRIBUTORS

To be paid by the employer.....	3d. a week.				
" " " " contributor.....	<table> <tr> <td>{ Men,</td><td>4d. "</td></tr> <tr> <td>{ Women,</td><td>3d. "</td></tr> </table>	{ Men,	4d. "	{ Women,	3d. "
{ Men,	4d. "				
{ Women,	3d. "				

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose remuneration does not exceed 2s. 6d. a working day, the following shall be the rates of contribution:—

Where the rate or remuneration does not exceed 1s. 6d. a working day—

To be paid by the employer.....	<table> <tr> <td>{ For men,</td><td>6d. a week.</td></tr> <tr> <td>{ " women,</td><td>5d. "</td></tr> </table>	{ For men,	6d. a week.	{ " women,	5d. "
{ For men,	6d. a week.				
{ " women,	5d. "				
" " " out of moneys provided by Parliament.....	1d. "				

Where the rate of remuneration exceeds 1s. 6d. but does not exceed 2s. a working day—

To be paid by the employer.....	<table> <tr> <td>{ For men,</td><td>5d. a week.</td></tr> <tr> <td>{ " women,</td><td>4d. "</td></tr> </table>	{ For men,	5d. a week.	{ " women,	4d. "
{ For men,	5d. a week.				
{ " women,	4d. "				
" " " " contributor.....	1d. "				
" " " out of moneys provided by Parliament.....	1d. "				

Where the rate of remuneration exceeds 2s. but does not exceed 2s. 6d. a working day—

## National Insurance Act of 1911

To be paid by the employer.....	{ For men,	4d. a week.
“ “ “ “ “ contributor.....	“ women,	3d. “
		3d. “

## PART II

## EMPLOYED RATE IN IRELAND

In the case of men.....	5½d. a week.
“ “ “ “ women.....	4½d. “

## CONTRIBUTIONS BY EMPLOYERS AND EMPLOYED CONTRIBUTORS

To be paid by the employer.....	2½d. a week.
“ “ “ “ “ contributor.....	{ For men, 3d. “
	“ women, 2d. “

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose remuneration does not exceed 2s. 6d. a working day, the following shall be the rates of contribution:—

Where the rate of remuneration does not exceed 1s. 6d. a working day—

To be paid by the employer.....	{ For men, 4½d. a week.
“ “ “ “ out of moneys provided by Parliament.....	“ women, 3½d. “
	1d. “

Where the rate of remuneration exceeds 1s. 6d. but does not exceed 2s. a working day—

To be paid by the employer.....	{ For men, 4d. a week.
“ “ “ “ “ contributor.....	“ women, 3d. “
	½d. a week.
“ “ “ out of moneys provided by Parliament.....	1d. “

Where the rate of remuneration exceeds 2s. but does not exceed 2s. 6d. a working day—

To be paid by the employer.....	{ For men, 3½d. a week.
“ “ “ “ “ contributor.....	“ women, 2½d. “
	2d. “

## THIRD SCHEDULE

## Section 4

## RULES AS TO PAYMENT AND RECOVERY OF CONTRIBUTIONS PAID BY EMPLOYERS ON BEHALF OF EMPLOYED CONTRIBUTORS UNDER PART I OF THIS ACT RELATING TO HEALTH INSURANCE

(1) A weekly contribution shall be payable for each calendar week during the whole or any part of which an employed contributor has been employed by an employer: Provided that, where one weekly contribution has been paid in respect of an employed contributor in any such week, no further contribution shall be payable in respect of him in the same week, and that, where no remuneration has been received and no services rendered by an employed contributor during any such week, or where no services have been rendered by an employed contributor during any such week and the employed contributor has been in receipt of sickness or disablement benefit during the whole or any part of that week, the employer shall not be liable to pay any contribution either on his own behalf or on behalf of the contributor in respect of that week.

(2) The employer shall, except as herein-after provided, be entitled to recover from the employed contributor the amount of any contributions paid by him on behalf of the employed contributor.

(3) Except where the employed contributor does not receive any wages or other pecuniary remuneration from the employer, the amounts so recoverable shall, notwithstanding the provisions of any Act or any contract to the contrary, be recoverable by means of deductions from the wages or other remuneration, and not otherwise; but no such deductions may be made from any wages or remuneration other than such as are paid in respect of the period or part of the period in respect of which the contribution is payable, or in excess of the sum which represents the amount of the contributions for the period (if such period is longer than a week) in respect of which the wages or other remuneration are paid.

(4) Where a contribution paid by the employer on behalf of an employed contributor is recoverable from the contributor but is not recoverable by means of deductions as aforesaid, it shall (without prejudice to any other means of recovery) be recoverable summarily as a civil debt, but no such contribution shall be recoverable unless proceedings for the purpose are instituted within three months from the date when the contribution was payable.

(5) Where the contributor is employed by more than one employer in any calendar week, the first person employing him in that week or such other employer or employers as may be prescribed shall be deemed to be

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National Insurance Act of 1911

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the employer for the purposes of the provisions of Part I of this Act relating to the payment of contributions and of this schedule.

(6) Regulations of the Insurance Commissioners may provide that in any cases or any classes of cases where employed contributors work under the general control and management of some person other than their immediate employer, such as the owner, agent, or manager of a mine or quarry, or the occupier of a factory or workshop, such person shall, for the purposes of the provisions of Part 1 of this Act relating to the payment of contributions and of this schedule, be treated as the employer, and may provide for allowing him to deduct the amount of any contributions (other than employer's contributions) which he may become liable to pay from any sums payable by him to the immediate employer, and for enabling the immediate employer to recover from the employed contributors the like sums and in the like manner as if he were liable to pay the contributions.

(7) Where the contributor is not paid wages or other money payments by his employer or any other person, the employer shall be liable to pay the contributions payable both by himself and the contributor, and shall not be entitled to recover any part thereof from the contributor.

(8) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages of or otherwise to recover from the contributor the employer's contribution.

(9) Any sum deducted by any employer from wages or other remuneration under this schedule shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

(10) The Insurance Commissioners may, by regulations, provide that in case of outworkers the contributions to be paid may be determined by reference to the work actually done, instead of by reference to the weeks in which work is done, and any such regulations may apply to all trades or to any specified classes or branches of trades, and may determine the conditions to be complied with by employers who adopt such a system of payment of contributions.

(11) For the purposes of this schedule the expression "calendar week" means the period from midnight on one Sunday to midnight on the following Sunday.

## FOURTH SCHEDULE

## Sections 8, 9, 37, 44 and 81

## BENEFITS UNDER PART I OF THIS ACT RELATING TO HEALTH INSURANCE

## PART I

## RATES OF BENEFITS

Table A.—*Ordinary Rates*

Sickness benefit: for men, the sum of 10s. a week throughout the whole period of twenty-six weeks; for women, the sum of 7s. 6d. a week throughout the whole period of twenty-six weeks.

Disablement benefit: the sum of 5s. a week for men and women alike.

Table B.—*Reduced Rates in the Case of Unmarried Minors*

Sickness Benefit—for males, the sum of 6s. a week during the first thirteen weeks and the sum of 5s. a week during the second thirteen weeks.

For females, the sum of 5s. a week for the first thirteen weeks and the sum of 4s. a week for the second thirteen weeks.

Disablement Benefit—for females, the sum of 4s. a week.

Table C.—*Reduced Rates for Persons over Fifty in Certain Cases*

Where the injured person is over 50 and under 60 at the time of becoming an employed contributor—

For men, the sum of 7s. a week throughout the whole period of twenty-six weeks.

For women, the sum of 6s. a week throughout the whole period of twenty-six weeks.

Where the insured person is over 60 at the time of becoming an employed contributor—

For both men and women, the sum of 6s. a week for the first thirteen weeks, and 5s. a week during the second thirteen weeks.

Table D.—*Rates and Conditions for Married Women*

Sickness benefit: during the first thirteen weeks, the sum of 5s. a week; during the second thirteen weeks, 3s. a week.

Disablement benefit: the sum of 3s. a week.

Sickness benefit and disablement benefit shall not be payable during the two weeks before and four weeks after confinement, except in respect

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National Insurance Act of 1911

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of a disease or disablement neither directly nor indirectly connected with childbirth.

## PART II

## ADDITIONAL BENEFITS

(1) Medical treatment and attendance for any persons dependent upon the labour of a member.

(2) The payment of the whole or any part of the cost of dental treatment.

(3) An increase of sickness benefit or disablement benefit in the case either of all members of the society or of such of them as have any children or any specified number of children wholly or in part dependent upon them.

(4) Payment of sickness benefit from the first, second, or third day after the commencement of the disease or disablement.

(5) The payment of a disablement allowance to members though not totally incapable of work.

(6) An increase of maternity benefit.

(7) Allowances to a member during convalescence from some disease or disablement in respect of which sickness benefit or disablement benefit has been payable.

(8) The building or leasing of premises suitable for convalescent homes and the maintenance of such homes.

(9) The payment of pensions or superannuation allowances whether by way of addition to old age pensions under the Old Age Pensions Act, 1908, or otherwise.

(10) The payment, subject to the prescribed conditions, of contributions to superannuation funds in which the members are interested.

(11) Payments to members who are in want or distress including the remission of arrears whenever such arrears may have become due.

(12) Payments for the personal use of a member who, by reason of being an inmate of a hospital or other institution, is not in receipt of sickness benefit or disablement benefit.

(13) Payments to members not allowed to attend work on account of infection.

(14) Repayment of the whole or any part of contributions thereafter payable under Part I of this Act by members of the society or any class thereof.

## PART III

## BENEFITS FOR MARRIED WOMEN WHO DO NOT BECOME VOLUNTARY CONTRIBUTORS AT REDUCED RATES

Payment of the sum of 5s. a week on confinement during a period not exceeding four weeks on any one occasion.

Payments during any period of sickness or distress, subject to regulations made by the Insurance Commissioners and to the discretion of the society or committee administering the benefit.

## FIFTH SCHEDULE

## REDUCTION OR POSTPONEMENT OF SICKNESS BENEFIT AND WHERE CONTRIBUTIONS ARE IN ARREAR

TABLE

(1)				(2)			
<i>Where the arrears amount to</i>				<i>Rates of Sickness Benefit</i>			
				Men		Women	
				s.	d.	s.	d.
4 contributions a year on average				9	6	7	3
5 " " "				9	0	7	0
6 " " "				8	6	6	9
7 " " "				8	0	6	6
8 " " "				7	6	6	3
9 " " "				7	0	6	0
10 " " "				6	6	5	9
11 " " "				6	0	5	6
12 " " "				5	6	5	3
13 " " "				5	0	5	0
				5s. 0d., commencing 5th day after commencement of illness.			
For both Men and Women				"	"	6th	" "
				"	"	7th	" "
				"	"	8th	" "
				"	"	9th	" "
				"	"	10th	" "
				"	"	11th	" "
				"	"	12th	" "
				"	"	13th	" "
				"	"	14th	" "

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National Insurance Act of 1911

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*Notes*

Where the insured person is, by virtue of any of the provisions of Part I of this Act, other than those relating to arrears, entitled to sickness benefit at a rate lower than the full rate, this Table shall have effect as if the entries in the first column were so shifted down that the first entry therein was set opposite the entry in the second column next below the entry specifying the rate of sickness benefit to which the insured person is entitled.

When the rate of sickness benefit during the first thirteen weeks to which the insured person is entitled is, by virtue of any of the provisions of this Act, other than those relating to arrears, less than 5s. a week, this Table shall have effect as if such lower rate were therein substituted for the rate of 5s. a week.

## SIXTH SCHEDULE

## Section 84

## LIST OF INSURED TRADES FOR THE PURPOSES OF PART II OF THIS ACT RELATING TO UNEMPLOYMENT INSURANCE

(1) Building; that is to say, the construction, alteration, repair, decoration, or demolition of buildings, including the manufacture of any fittings of wood of a kind commonly made in builders' workshops or yards.

(2) Construction of works; that is to say, the construction, reconstruction, or alteration of railroads, docks, harbours, canals, embankments, bridges, piers or other works of construction.

(3) Shipbuilding; that is to say, the construction, alteration, repair or decoration of ships, boats or other craft by persons not being usually members of a ship's crew, including the manufacture of any fittings of wood of a kind commonly made in a shipbuilding yard.

(4) Mechanical engineering, including the manufacture of ordinance and firearms.

(5) Iron founding, whether included under the foregoing headings or not.

(6) Construction of vehicles; that is to say, the construction, repair, or decoration of vehicles.

(7) Saw milling (including machine woodwork) carried on in connection with any other insured trade or of a kind commonly so carried on.

## SEVENTH SCHEDULE

## Section 84

## RATES AND PERIODS OF UNEMPLOYMENT BENEFIT

In respect of each week following the first week of any period of unemployment, seven shillings, or such other rates as may be prescribed either generally or for any particular trade or any branch thereof:



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National Insurance Act of 1911

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Provided that, in the case of a workman under the age of eighteen, no unemployment benefit shall be paid while the workman is below the age of seventeen, and while the workman is of the age of seventeen or upwards but below the age of eighteen, unemployment benefit shall only be paid at half the rate at which it would be payable if the workman was above the age of eighteen.

No workman shall receive unemployment benefit for more than fifteen or such other number of weeks as may be prescribed either generally or for any particular trade or branch thereof within any period of twelve months, or in respect of any period less than one day.

No workman shall receive more unemployment benefit than in the proportion of one week's benefit for every five contributions paid by him under this Act:

Provided that for the purpose of the foregoing paragraph—

(a) in the case of a workman who satisfies the Board of Trade that he is over the age of twenty-one and has habitually worked at an insured trade before the commencement of this Act, there shall be deemed to be added to the number of contributions which he has actually paid five contributions for each period of three months or part of such period during which he has so worked before the commencement of this Act, up to a maximum of twenty-five contributions; and

(b) where, owing to the fact that the wages or other remuneration of a workman are paid at intervals greater than a week, or for any other like reason contributions are paid under Part II of this Act in respect of any workman at intervals greater than a week, that workman shall be entitled to treat each of such contributions as so many contributions as there are weeks in the period for which the contribution has been paid.

Any time during which a workman is, under Part II of this Act, disqualified for receiving unemployment benefit shall be excluded in the computation of periods of unemployment under this schedule.

A period of unemployment shall not be deemed to commence till the workman has made application for unemployment benefit in such manner as may be prescribed.

The power conferred by this schedule on the Board of Trade to prescribe rates and periods of unemployment benefit shall not be exercised so as to increase the rate of benefit above eight shillings per week or reduce it below six shillings per week, or to increase the period of unemployment benefit above fifteen weeks, or to alter the proportion which the period of benefit bears to the number of contributions paid, except by rules confirmed by an order made in accordance with the provisions of this Act relating to special orders.

National Insurance Act of 1911

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## EIGHTH SCHEDULE

## Sections 85, 102 and 103

CONTRIBUTIONS FOR THE PURPOSES OF PART II OF THIS ACT RELATING TO  
UNEMPLOYMENT INSURANCE

Rates of contribution from workmen and employers.

From every workman employed in an insured trade for every week  
he is so employed . . . . . 2½d.

From every employer by whom one or more workmen are employed  
in an insured trade, in respect of each workman, for every week  
he is so employed . . . . . 2½d.

Provided that, in the case of a workman below the age of eighteen, 1d. shall be substituted for 2½d. as the contribution from the workman and from the employer, but, for the purpose of reckoning the number of contributions in respect of such a workman except as regards the payment of unemployment benefit before he reaches the age of eighteen, the 1d. shall be treated as two-fifths of a contribution.

Every such period of employment of less than a week shall, for the purposes of this schedule, be treated as if it were employment for a whole week, except that, where the period of employment is two days or less, the contributions both of the employer and of the workman shall be reduced to one penny if the period does not exceed one day and to twopence if it exceeds one day; and, in such case, in reckoning the number of contributions under Part II of this Act and the schedules therein referred to, contributions at such reduced rates shall be treated as two-fifths or four-fifths of a contribution as the case may require.

## NINTH SCHEDULE

## Section 113

PROVISIONS OF THE FACTORY AND WORKSHOP ACT, 1901, APPLIED TO SPECIAL  
ORDERS MADE UNDER THIS ACT

80.—(1) Before the authority empowered to make special orders make any special order under this Act, they shall publish, in such manner as they may think best adapted for informing persons affected, notice of the proposal to make the order, and of the place where copies of the draft order may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft order by or on behalf of persons affected must be sent to the authority.

National Insurance Act of 1911

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(2) Every objection must be in writing and state—

(a) the draft order or portions of draft order objected to;

(b) the specific grounds of objection; and

(c) the omissions, additions, or modifications asked for.

(3) The authority shall consider any objection made by or on behalf of any persons appearing to them to be affected which is sent to them within the required time, and they may, if they think fit, amend the draft order, and shall then cause the amended draft to be dealt with in like manner as an original draft.

(4) Where the authority do not amend or withdraw any draft order to which any objection has been made, then (unless the objection either is withdrawn or appears to them to be frivolous, they shall, before making the order, direct an inquiry to be held in the manner hereinafter provided.

81.—(1) The authority may appoint a competent and impartial person to hold an inquiry with regard to any draft order, and to report to them thereon.

(2) The inquiry shall be held in public, and any objector and any other person who, in the opinion of the person holding the inquiry, is affected by the draft order, may appear at the inquiry either in person or by counsel, solicitor, or agent.

(3) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the authority.

(5) The fee to be paid to the person holding the inquiry shall be such as the authority may direct and shall be deemed to be part of the expenses of the authority in carrying this Act into effect.

(6) For the purposes of this schedule, the expression "authority" means the Insurance Commissioners or the Board of Trade, as the case may be.

## CHAPTER XXVII

### GERMAN WORKMEN'S INSURANCE CODE

#### TEXT OF THE CODE WITH INTRODUCTORY ANALYSIS

By the statute which was enacted on July 19, 1911, but which was not finally put in operation until January 1, 1913, the laws relating to sickness insurance, accident insurance and invalidity insurance were brought together in a single Code. Each one of these branches of the compulsory insurance law of the German Empire, however, is kept distinct from the other. When the first social insurance law was enacted in 1884 it applied to a few industries only and has been extended from time to time so that the present Code applies practically to all industries of the German Empire. The sickness insurance, the accident insurance and the invalidity and old age insurance have all been extended from time to time and neither one of these branches was adopted so as to apply generally when first put upon the statute books. No attempt has been made to consolidate the organizations conducting the three branches of insurance, although there has been much discussion on this subject and many persons have favored such a consolidation. Separate administrative bodies conduct the three branches of insurance, but the new Code provides for a number of Government officials to supervise the insurance organizations.

The sickness insurance is divided into a number of different funds, some of which are bounded by territorial districts and others by occupations. Then there is what is known as the local insurance funds which provide insurance for the greater number of insured persons and in particular for those not included in any of the other special groups. The sickness insurance is supported by contributions of two-thirds from the workmen and one-third from the employer and in the administration of the funds the same proportion is allowed in the representations of the workmen and the employers. The benefits consist of medical and hospital care, a proportion of the wages, together with an allowance for the family in case of hospital treatment and a funeral benefit. The sickness insurance takes care of disability which does not exceed thirteen weeks. In cases where disability exceeds that period of time the accident insurance fund becomes responsible for the benefits.

The accident insurance fund is supported entirely by the employers and is divided according to trades. The administrators are selected by

the employers themselves, subject to the supervision of the Government officials.

The invalidity and survivors' insurance is conducted by territorial organizations, being directed by committees consisting one-half of employers and one-half of insured persons. The contributions are made also one-half by the employers and one-half by the insured persons, and the Government also contributes in certain specific cases. Benefits are paid on the occurrence of invalidity, that is a disability caused by sickness or physical defect which prevents a person from earning one-third of the amount which a normal person of similar trade and status in life is able to earn. The invalidity pension consists of an annual subsidy from the employer, a basic amount fixed by the number of contributions paid and a subsidy of one-tenth of the pension for each child of the pensioner under fifteen years of age, with a maximum of five-tenths. An old age pension is paid after the completion of the seventieth year of life, without regard to the physical condition of the claimant. The widow's pension is paid to the invalid widow of an insured person so long as she remains unmarried. An orphan's pension is paid to the orphans of the insured person under fifteen years of age.

It was originally intended to put this Code into effect on January 1, 1912, but by reason of the administration of the problems involved in consolidating all the insurance laws the date for putting the law into effect was postponed to January 1, 1913.

## ANALYSIS OF THE CODE AND THE INTRODUCTORY LAW

### Book One.—General provisions:

	Article
Section One.—Scope of the imperial insurance . . . . .	1, 2

#### Section Two.—Carriers of the imperial insurance—

I. Designation . . . . .	3
II. Legal competence . . . . .	4
III. Administrative bodies . . . . .	5-11
IV. Honorary offices . . . . .	12-24
V. Assets . . . . .	25-29
VI. Supervision . . . . .	30-34

#### Section Three.—Insurance authorities—

I. General provisions . . . . .	35
II. Local insurance offices—	
1. Establishment . . . . .	36-38
2. Composition . . . . .	39-55
3. Committees . . . . .	56-58
4. Costs . . . . .	59, 60

Code of January 1, 1913

**Book One.—General Provisions—Concluded.****Section Three.—Insurance authorities—Concluded.**

III. Superior insurance offices—	Article
1. Establishment.....	61-67
2. Composition.....	68-76
3. Chambers.....	77, 78
4. Supervision—Costs.....	79-82
IV. Imperial Insurance Office—State insurance of- fices—	
1. Jurisdiction—Seat.....	83, 84
2. Composition.....	85-97
3. Senates.....	98-102
4. Accounting bureau—Costs.....	103, 104
5. State insurance offices.....	105-109

**Section Four.—Other general provisions—**

I. Authorities.....	110-114
II. Legal assistance.....	115-117
III. Benefits.....	118-121
IV. Medical treatment.....	122, 123
V. Time limits.....	124-134
VI. Notifications.....	135, 136
VII. Fees and stamp taxes.....	137, 138
VIII. Prohibitions and penalties.....	139-148
IX. Local wage rate.....	149-152
X. Place of employment.....	153-156
XI. Legislation of foreign countries.....	157, 158
XII. General definitions—	
1. Employments subject to insurance.....	159
2. Earnings.....	160
3. Agriculture.....	161
4. Persons engaged in home-working industries	162
5. German seagoing vessels.....	163
6. Fiscal year.....	164

**Book Two.—Sickness insurance:****Section One.—Scope of the insurance—**

I. Compulsory insurance.....	165-175
II. Voluntary insurance.....	176-178

**Section Two.—Benefits of the insurance—**

I. General provisions as to benefits.....	179-181
II. Sickness benefits.....	182-194
III. Maternity benefits.....	195-200

Code of January 1, 1913

**Book Two.—Sickness Insurance—Concluded.****Section Two.—Benefits of the insurance—Concluded. Article**

IV. Funeral benefits.....	201-204
V. Benefits to the family.....	205
VI. General provisions.....	206-224

**Section Three.—Carriers of the insurance—**

I. Kinds of sick funds.....	225
II. General local sick funds and rural sick funds....	226-238
III. Special local sick funds.....	239-244
IV. Establishment sick funds and guild sick funds...	245-257
V. Controversies.....	258
VI. Benefits of equal value.....	259-263
VII. Combination, separation, dissolution, and closing—	
1. Local and rural sick funds.....	264-269
2. Establishment and guild sick funds.....	270-279
3. Procedure.....	280-305

**Section Four.—Constitution—**

I. Membership—	
1. Beginning and termination.....	306-316
2. Registration.....	317-319
II. Constitution.....	320-326
III. Administrative bodies of the funds—	
1. Organization of local and rural sick funds..	327-337
2. Organization of establishment and guild sick funds.....	338-341
3. Duties.....	342-348
IV. Employees and officials of the fund.....	349-362
V. Administration of resources.....	363-367
VI. Relation to physicians, dentists, hospitals, and pharmacies.....	368-376

**Section Five.—Supervision..... 377-379****Section Six.—Raising of the funds—**

I. Contributions.....	380-392
II. Payment of the contributions.....	393-405

**Section Seven.—Federations of funds.—Sections..... 406-415****Section Eight.—Special occupations—**

I. General provisions.....	416
II. Agriculture.....	417-434
III. Servants.....	435-440
IV. Temporary employment.....	441-458

## Code of January 1, 1913

**Book Two.—Sickness Insurance—Concluded.**

Section Eight—Special occupations—Concluded.	Article
V. Itinerant trades . . . . .	459-465
VI. Home-working industries . . . . .	466-493
VII. Apprentices . . . . .	494
Section Nine.—Miners' sick funds . . . . .	495-502
Section Ten.—Substitute funds—	
I. Authorization . . . . .	503-516
II. Relation to sick funds . . . . .	517-525
Section Eleven.—Final provisions and penal provisions—	
I. Final provisions . . . . .	526-528
II. Penal provisions . . . . .	529-536

**Book Three.—Accident insurance:**

Section One.—Scope of the insurance . . . . .	537-554
Section Two.—Benefits of the insurance . . . . .	555-622
Section Three.—Carriers of the insurance—	
I. The accident associations and other carriers of the insurance . . . . .	623-629
II. Composition of the accident associations . . . . .	630-634
III. Changes in the status of the accident associations . . . . .	635-648
Section Four.—Organization of the accident associations—	
I. Membership and the right to vote . . . . .	649-652
II. Registration of the establishments . . . . .	653-656
III. Register of establishments . . . . .	657-663
IV. Changes in the undertakers—Changes in the establishment and in its membership in the accident association . . . . .	664-674
V. Constitution . . . . .	675-684
VI. Administrative bodies of the accident association . . . . .	685-689
VII. Employees of associations . . . . .	690-705
VIII. Formation of the risk classes . . . . .	706-712
IX. Division and joint carrying of the burden . . . . .	713-716
X. Administration of the assets . . . . .	717-721
Section Five.—Supervision . . . . .	722-725
Section Six.—Payment of the compensation—Raising of the funds—	
I. Payments through the Post Office Department . . . . .	726-730
II. Raising of the funds . . . . .	731-748
III. Procedure in assessments and collections . . . . .	749-776
IV. Transferring amounts to the Post Office Department . . . . .	777-782



**Book Three.—Accident Insurance—Continued.****Section Seven.—Branch institutes—**

I. Branch institutes for the building trades—	Article
1. Establishment, scope, and organization . . . . .	783-798
2. Insurance at the expense of the undertakers—Premiums . . . . .	799-824
3. Insurance at the cost of communes . . . . .	825-835
II. Branch institutes for the keeping of riding animals and conveyances . . . . .	836-842

Section Eight.—Additional institutions . . . . .	843-847
--	---------

**Section Nine.—Accident prevention—Supervision—**

I. Regulations for accident prevention . . . . .	848-873
II. Supervision . . . . .	874-889
III. Special provisions for building operations and for the keeping of riding animals and conveyances . . . . .	890, 891

Section Ten.—Establishments and activities on account of public bodies . . . . .	892-897
--	---------

**Section Eleven.—Liability of undertakers and their representatives—**

I. Liability to injured persons and survivors . . . . .	898-902
II. Liability to accident associations, sick funds, etc. . . . .	903-907

Section Twelve.—Penal provisions . . . . .	908-914
--	---------

**Part Two.—Agricultural accident insurance—**

Section One.—Scope of the insurance . . . . .	915-929
---	---------

Section Two.—Benefits of the insurance . . . . .	930-955
--	---------

**Section Three.—Carriers of the insurance—**

I. Accident associations and other carriers of the insurance . . . . .	956-959
II. Changes in the status of the accident association . . . . .	960, 961

**Section Four.—Organization—**

I. Membership and right to vote . . . . .	962-966
II. Registration of the establishments . . . . .	967
III. Changes in the undertakers—Changes in the establishment and in its membership in the accident association . . . . .	968-970
IV. Constitution . . . . .	971-974
V. Administrative bodies of the accident association . . . . .	975-977
VI. Employees of the association . . . . .	978

Code of January 1, 1913

**Book Three.—Accident Insurance—Continued.****Part Two.—Agricultural accident insurance—Concluded.****Section Four.—Organization—Concluded.** **Article**

VII. Formation of the risk classes. . . . . 979

VIII. Division and joint carrying of the burden. . . . . 980-982

IX. Administration of the assets. . . . . 983, 984

**Section Five.—Supervision. . . . . 985-987****Section Six.—Payment of the compensation—Raising of the funds—**

I. Payments through the Post Office Department. . . . . 988

**II. Raising of the funds—**

1. General provisions. . . . . 989

2. Standard of the labor need and of the risk classes. . . . . 990-1004

3. Standard of the tax rate. . . . . 1005-1009

4. Other standards. . . . . 1010

5. General provisions. . . . . 1011-1013

**III. Procedure in assessments and collections. . . . . 1014-1027****IV. Transferring amounts to the Post Office Department. . . . . 1028****Section Seven.—Additional institutions. . . . . 1029****Section Eight.—Accident prevention—Supervision. . . . . 1030-1032****Section Nine.—Establishments of the Empire and of the States. . . . . 1033****Section Ten.—Regulation by State legislation. . . . . 1034-1041****Section Eleven.—Liability of undertakers and their representatives. . . . . 1042****Section Twelve.—Penal provisions. . . . . 1043-1045****Part Three.—Navigation accident association—****Section One.—Scope of the insurance. . . . . 1046-1064****Section Two.—Benefits of the insurance. . . . . 1065-1117****Section Three.—Carriers of the insurance. . . . . 1118-1122****Section Four.—Organization—**

I. Membership and right to vote—Representatives. . . . . 1123-1131

II. Registration of establishments. . . . . 1132

III. Register of establishments. . . . . 1133, 1134

IV. Changes in the conditions of the establishment. . . . . 1135-1141

V. Constitution. . . . . 1142-1145

**Book Three.—Accident insurance—Concluded.****Part Three—Navigation accident association—Concluded.****Section Four.—Organization—Concluded.**

VI. Administrative bodies of the accident association.....	Article 1146
VII. Employees of the association.....	1147
VIII. Making the estimates—Risk tariff and special costs.....	1148–1156
IX. Administration of the assets.....	1157
Section Five.—Supervision.....	1158
Section Six.—Payment of the compensation—Raising of the funds—	
I. Payments through the Post Office Department.....	1159–1161
II. Raising of the funds.....	1162–1164
III. Procedure in assessments and collections.....	1165–1184
IV. Transferring amounts to the Post Office Department.....	1185
Section Seven.—Branch institute for small-scale establishments engaged in navigation and in deep-sea fishing and coast fishing.....	1186–1197
Section Eight.—Additional institutions.....	1198
Section Nine.—Accident prevention—Supervision—	
I. Regulations for the prevention of accidents....	1199–1208
II. Supervision.....	1209–1217
Section Ten.—Establishments of the Empire and of the States.....	1218
Section Eleven.—Liability of undertakers and their representatives.....	1219
Section Twelve.—Penal provisions.....	1220–1225

**Book Four.—Invalidity and survivors' insurance:****Section One.—Scope of the insurance—**

I. Compulsory insurance.....	1226–1242
II. Voluntary insurance.....	1243, 1244
III. Wage classes.....	1245–1249

**Section Two.—Benefits of the insurance—**

I. General provisions.....	1250–1254
II. Invalidity pensions.....	1255, 1256
III. Old-age pensions.....	1257
IV. Benefits of survivors.....	1258–1268
V. Medical treatment.....	1269–1274

Code of January 1, 1913

**Book Four.—Invalidity and survivors' insurance—Continued.****Section Two.—Benefits of the insurance—Concluded.** Article

VI. Payments in kind instead of pensions . . . . .	1275-1277
VII. Waiting term . . . . .	1278, 1279
VIII. Expiration of the claim . . . . .	1280-1283
IX. Computation of insurance benefits . . . . .	1284-1297
X. Cessation of the benefits . . . . .	1298-1303
XI. Withdrawal of the pension . . . . .	1304-1310
XII. Suspension of the pension—Capital sum settle- ments . . . . .	1311-1318
XIII. Special powers of the insurance institute . . . . .	1319, 1320
XIV. Relation to other claims . . . . .	1321-1325

**Section Three.—Carriers of the insurance—****A. Insurance institutes—****I. External features—**

1. Establishment . . . . .	1326-1328
2. Local competence . . . . .	1329-1331
3. Changes in the districts . . . . .	1332-1337

**II. Internal features—**

1. Constitution . . . . .	1338-1341
2. Directorate . . . . .	1342-1350
3. Committee . . . . .	1351-1355
4. Administration of the assets . . . . .	1356-1358
5. General provisions . . . . .	1359

**B. Special institutes—**

1. General provisions . . . . .	1360-1374
2. Special institute of the navigation accident association . . . . .	1375-1380

**Section Four.—Supervision . . . . . 1381, 1382****Section Five.—Payment of the benefits—Raising of the  
funds—****I. Payment through the Post Office Department . . 1383-1386****II. Raising of the funds—**

1. General provisions . . . . .	1387
2. Size of the contributions . . . . .	1388-1392
3. Periods of military service and of sickness . . . . .	1393, 1394
4. General cost—Special cost . . . . .	1395-1400
5. Reinsurance federations . . . . .	1401
6. Liability for the obligations of the institute . . . . .	1402
7. Distribution and refunding of the insur- ance benefits—Transferring amounts to the Post Office Department . . . . .	1403-1410

**Book Four.—Invalidity and survivors' insurance—Concluded.**

Section Six.—Procedure as to contributions—	Article
I. Stamps. ....	1411, 1412
II. Receipt cards. ....	1413-1425
III. Payment of contributions through the employer—Proof of military service and of sickness. ....	1426-1438
IV. Payment of the contributions by the insured persons. ....	1439-1441
V. Invalid contributions. ....	1442-1445
VI. Contributions paid in error. ....	1446
VII. Collecting the contributions. ....	1447-1457
VIII. Rounding off the amounts. ....	1458
IX. Controversies as to contributions. ....	1459-1464
X. Supervision. ....	1465-1470
XI. Special provisions. ....	1471
Section Seven.—Voluntary additional insurance. ....	1472-1483
Section Eight.—Final provisions and penal provisions—	
I. Sick funds. ....	1484
II. Special provisions for seamen. ....	1485, 1486
III. Penal provisions. ....	1487-1500

**Book Five.—Relations of the insurance carriers to each other and to other bodies:**

Section One.—Relations of the insurance carriers to each other—	
I. Sickness insurance and accident insurance. ....	1501-1517
II. Sickness insurance and invalidity and survivors' insurance. ....	1518-1521
III. Accident insurance and invalidity and survivors' insurance. ....	1522-1526
Section Two.—Relations of the insurance carriers to other bodies. ....	1527-1544

**Book Six.—Procedure:****A. Determination of benefits—**

Section One.—Determination by the insurance carrier—	
I. Inauguration of the procedure. ....	1545-1550
II. Sickness insurance. ....	1551

## Code of January 1, 1913

**Book Six.—Procedure—Continued.****A. Determination of benefits—Continued.****Section One.—Determination by the insurance carrier—Concluded.****III. Accident insurance—**

Article

- |  |            |
|--|------------|
| 1. Reports of accidents . . . . .  | 1552-1558  |
| 2. Investigation of accidents . . . . .  | 1559-1567  |
| 3. Decisions of insurance carriers—  |            |
| a. General provisions . . . . .  | 1568-1582  |
| b. Decision . . . . .  | 1583-1590  |
| c. Protest . . . . .   | 1591-1599  |
| d. Special provisions for the protest against<br>changes in permanent pensions . . . . . | 1600-1605  |
| e. Final decision . . . . .  | 1606, 1607 |
| f. Other provisions . . . . .  | 1608-1612  |

**IV. Invalidity and survivors' insurance—**

- |   |           |
|---|-----------|
| 1. Submission of claims . . . . .                                       | 1613-1616 |
| 2. Preparation of the case by the local in-<br>surance office . . . . . | 1617-1629 |
| 3. Decision of the insurance carriers . . . . .                         | 1630-1634 |
| 4. Renewal of applications . . . . .                                    | 1635      |

**Section Two.—Determination by judgment procedure—****I. Procedure before the local insurance office—**

- |   |           |
|---|-----------|
| 1. Competence of the local insurance office . .                                     | 1636-1640 |
| 2. Disqualification and rejection of members<br>of the judgment committee . . . . . | 1641-1649 |
| 3. Procedure up to the oral proceedings . . . .                                     | 1650-1659 |
| 4. Oral proceedings . . . . .   | 1660-1674 |

**II. Procedure before the superior insurance office . .**

1675-1693

**III. Procedure before the Imperial Insurance Office  
(or the State insurance office)—**

- |   |           |
|---|-----------|
| 1. Sickness, and invalidity and survivors'<br>insurance . . . . . | 1694-1698 |
| 2. Accident insurance . . . . .                                   | 1699-1706 |
| 3. General provisions . . . . .                                   | 1707-1721 |

**IV. Reopening of the procedure—**

- |                                      |           |
|--------------------------------------|-----------|
| 1. Grounds for contesting . . . . .  | 1722-1726 |
| 2. Competence . . . . .              | 1727      |
| 3. Course of the procedure . . . . . | 1728-1733 |
| 4. Final provisions . . . . .        | 1734      |

**Section Three.—Special kinds of procedure—****I. Controversies of several insurance carriers in**

**Book Six.—Procedure—Concluded.****A. Determination of benefits—Concluded.****Section Three.—Special kinds of procedure—Concluded.**

regard to the obligation to furnish compensation.....	Article 1735-1738
II. Procedure of distribution.....	1739-1742
III. Determination of the validity of a claim to a widow's pension.....	1743
IV. Contesting the final decisions of the insurance carrier.....	1744

**Section Four.—Special provisions for the navigation accident insurance—**

I. General provisions.....	1745
II. Reporting of accidents.....	1746-1752
III. Investigation of accidents.....	1753-1766
IV. Penal provisions.....	1767
V. Competence of the administrative bodies for determinations.....	1768, 1769
VI. Controversies.....	1770

**B. Other judgment matters—**

I. General provisions.....	1771
II. Competence.....	1772-1775
III. Other provisions.....	1776-1779

**C. Decision procedure—**

Section One.—General provisions.....	1780-1790
Section Two.—Appeals.....	1791-1796
Section Three.—Further appeals.....	1797-1801

**D. Costs and fees—**

I. Costs of the procedure.....	1802, 1803
II. Fees of lawyers.....	1804, 1805

**Introductory Law for the Workmen's Insurance Code:****Section A—**

I. General provisions.....	1-6
II. Insurance authorities.....	7-13
III. Sickness insurance.....	14-42
IV. Accident insurance.....	43-63
V. Invalidity and survivors' insurance.....	64-84
VI. Procedure.....	85-99
VII. Final provision.....	100

Section B.....	101-104
----------------	---------

---

Code of January 1, 1913

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THE WORKMEN'S INSURANCE CODE <sup>1</sup>

## BOOK ONE—GENERAL PROVISIONS

## SECTION ONE—SCOPE OF THE IMPERIAL INSURANCE

## ARTICLE 1

Included in the imperial insurance (*Reichsversicherung*) are—  
The sickness insurance (*Krankenversicherung*);  
The accident insurance (*Unfallversicherung*);  
The invalidity and survivors' insurance (*Invaliden-und Hinterbliebenenversicherung*).

## ARTICLE 2

Of the special provisions—

Articles 165 to 536 apply to the sickness insurance;  
Articles 537 to 1225 apply to the accident insurance, of which articles 537 to 914 apply to the industrial (*gewerbliche*), articles 915 to 1045 to the agricultural (*landwirtschaftliche*), and articles 1046 to 1225 to the navigation accident insurance (*See-Unfallversicherung*);  
Articles 1226 to 1500 apply to the invalidity and survivors' insurance.

## SECTION TWO—CARRIERS OF THE IMPERIAL INSURANCE

## I. DESIGNATION

## ARTICLE 3

PARAGRAPH 1. The following are the carriers (*Träger*) of the imperial insurance unless this law provides otherwise:

For the sickness insurance, the sick funds (*Krankenkassen*);  
For the accident insurance, the employers' mutual trade associations (*Berufsgenossenschaften*); <sup>2</sup>  
For the invalidity and survivors' insurance, the insurance institutes (*Versicherungsanstalten*).

PAR. 2. The provisions of articles 4 to 34 apply to these insurance carriers.

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<sup>1</sup> Reichsversicherungsordnung. (Number 3921). Vom 19. Juli 1911. Reichs-Gesetzblatt, Aug. 1, 1911, pp. 509ff.

<sup>2</sup> In the following translation the *Berufsgenossenschaften* have been designated as "accident associations,"



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Code of January 1, 1913

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## II. LEGAL COMPETENCE

## ARTICLE 4

The carriers of insurance may sue and be sued.

## III. ADMINISTRATIVE BODIES

## ARTICLE 5

PARAGRAPH 1. Each carrier of insurance has a directorate. The latter represents it in and out of court. It has the status of a legal representative.

PAR. 2. Restrictions on the scope of this representation, not specified in the law, may be specified by the constitution, and have effect against third parties. The constitution may do this only in so far as this law permits.

PAR. 3. The constitution may specify, that also individual members of the directorate of the insurance carriers may represent them.

## ARTICLE 6

PARAGRAPH 1. The directorate must notify its supervisory authority within one week of the result of each election and of each change in its composition.

PAR. 2. In so far as the directorate needs credentials, a certificate of the supervisory officials as regards its composition and the extent of its power of representation suffices.

## ARTICLE 7

In urgent matters the directorate may take a vote by correspondence.

## ARTICLE 8

PARAGRAPH 1. If decisions of the administrative bodies of the insurance carrier are contrary to the law or the constitution, the president of the directorate shall appeal from them to the supervisory authority.

PAR. 2. The appeal effects a stay.

## ARTICLE 9

In the administrative bodies their president has the right to vote, and if there is a tie he gives the casting vote.

## ARTICLE 10

The required number of substitutes for the members shall be elected.

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Code of January 1, 1913

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## ARTICLE 11

The sessions are not public.

## IV. HONORARY OFFICES

## ARTICLE 12

PARAGRAPH 1. Only Germans who have attained their majority are eligible to the administrative bodies of the insurance carriers.

PAR. 2. The following are not eligible:

1. Persons who in consequence of criminal sentence have lost the right to hold public office, or who are being prosecuted at the time for a crime or misdemeanor which may cause the loss of this right, in case full proceedings have been begun against them;
2. Persons who are limited in the disposition of their property as the result of a court decree.

## ARTICLE 13

PARAGRAPH 1. Whoever regularly employs at least one person subject to insurance, and this person is insured with the insurance carrier, is eligible as a representative of the undertakers (*Unternehmer*)<sup>1</sup> or of other employers.

PAR. 2. Managers of establishments having a power of attorney have the same status as undertakers or other employers; business managers, and establishment officials of participating employers (art. 332, par. 2), have the same status as employers in the election to administrative bodies of sick funds; the legal representatives of members of an accident association have the same status as undertakers in the elections to the administrative bodies of accident associations.

PAR. 3. Members of a public authority with supervisory powers over a carrier of insurance are not eligible.

## ARTICLE 14

PARAGRAPH 1. Only persons insured in the insurance carrier are eligible as representatives of the insured persons.

PAR. 2. In the sickness, invalidity, and survivors' insurance, the insured persons will be accredited to the employers in the composition of the administrative bodies, if they employ regularly more than two persons subject to insurance. In the accident insurance insured members of the

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<sup>1</sup> The undertaker of an establishment is the one for whose account the establishment is conducted. See sec. 633

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Code of January 1, 1913

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accident associations are accredited to the undertakers if they employ regularly at least one person subject to insurance.

## ARTICLE 15

PARAGRAPH 1. The representatives of the undertakers and of other employers and of the insured persons are elected according to the principles of proportional representation.

PAR. 2. If the voting is restricted to nomination lists, the constitution determines the time limit for their submission; the election is secret, without affecting the nomination lists.

## ARTICLE 16

PARAGRAPH 1. The term of office is four years.

PAR. 2. After the expiration of this term, the elected persons remain in office until their successors take office.

PAR. 3. Whoever ceases to hold office may be reelected.

## ARTICLE 17

PARAGRAPH 1. Whoever is eligible as an undertaker or other employer may refuse election only under the following conditions:

1. If he has completed his sixtieth year of age.
2. If he has more than four legal children under age; those of his children adopted by another will not be included herewith.
3. If he is prevented by sickness or infirmity from administering the office as required by the regulations.
4. If he has more than one guardianship or trusteeship. The guardianship or trusteeship of children of the same parents counts only as one such; two coguardianships are equal to one guardianship; one honorary office of the imperial insurance is equal to one coguardianship.
5. If he employs servants only.

PAR. 2. After a minimum tenure of office of two years, reelection for the next term may be declined.

PAR. 3. The constitution may also specify other reasons for declining.

## ARTICLE 18

An undertaker or other employer declining an election without permissible cause may be punished by the president of the directorate by a fine up to 500 marks [\$119].

## ARTICLE 19

The president may fine a member of the directorate who fails to perform his duties not to exceed 50 marks [\$11.90], and on repetition with

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Code of January 1, 1913

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a fine not to exceed 300 marks [\$71.40]; if, however, the matter relates to a sick fund, then only up to 100 marks [\$23.80]. He must remit the fine if a sufficient excuse is established afterwards.

## ARTICLE 20

The decision of a supervisory authority in appeals on cases referred to in articles 18 and 19 is final.

## ARTICLE 21

PARAGRAPH 1. The persons elected administer their offices without compensation as an honorary office.

PAR. 2. The insurance carrier refunds them their cash expenditures and allows to the representatives of the insured persons reimbursement for earnings lost or in its place a lump sum for loss of time. The constitution may also allow such a lump sum to the representatives of undertakers or other employers.

PAR. 3. The determination of the lump sums requires confirmation by the authority which approves the constitution.

PAR. 4. The honorary members of the directorate shall not at the same time be salaried officials of the insurance carrier.

## ARTICLE 22

The representatives of the insured persons must notify their employer of each call to a meeting of the administrative bodies. If this is done within the required time, their absence from work does not give to the employer a sufficient reason to discontinue the relation of employer without observance of the regular period of notice of dismissal.

## ARTICLE 23

PARAGRAPH 1. The members of administrative bodies are liable for faithful business administration to the carriers of insurance in the same manner as guardians to their wards. The insurance carrier may relinquish claims on account of such liability only with the approval of the supervisory authority. The latter may enforce the liability in the place of and at the expense of the carrier.

PAR. 2. A member who intentionally injures the insurance carrier shall be punished with confinement in jail. In addition the penalty can also include the loss of civic rights. If the member has committed an act to procure for himself or some other person a pecuniary advantage, in addition to the prison sentence a fine not to exceed 3,000 marks [\$714] may be imposed.

Code of January 1, 1913

PAR. 3. During a discussion of those questions which affect the personal interests of a member or his relatives the member must abstain from taking part in the discussion and voting, and during the discussion must leave the room where the discussion takes place.

## ARTICLE 24

PARAGRAPH 1. If facts become known concerning an elected person which prove his ineligibility or his untrustworthiness for the conduct of business, he shall by resolution be removed from office, either by the directorate, or, in the case of a sick fund, by the supervisory authority.

PAR. 2. Before the passing of such a resolution he shall be given an opportunity to make a statement.

PAR. 3. An appeal against the resolution is permissible to the Imperial Insurance Office (decision senate) (*Beschlussensat*), or, if the case relates to a sick fund, to the superior insurance office (decision chamber) (*Beschlusskammer*).

PAR. 4. An elected person will be relieved of his office on his own application by resolution of the directorate if during his term of office one of the grounds of refusal specified in article 17, paragraph 1, numbers 2 to 5, becomes effective.

## V. ASSETS

## ARTICLE 25

PARAGRAPH 1. The means of insurance carriers shall be used only for legally prescribed and permissible purposes.

PAR. 2. Revenues and expenditures shall be accounted for separately and the assets kept safe separately.

PAR. 3. The insurance carriers shall engage only in such business as is assigned to them by the law.

## ARTICLE 26

PARAGRAPH 1. The assets shall be invested at interest like trust funds (arts. 1807 and 1808 of the Civil Code) in so far as this law does not permit other investments.

PAR. 2. The assets may also be invested in securities in which the laws of the States permit the investment of trust funds, and also in such mortgages, payable to the holder, of German joint-stock mortgage banks, on which the imperial bank (*Reichsbank*) makes loans in Class I.

## ARTICLE 27

PARAGRAPH 1. The highest administrative authority may also approve the investment of the assets in loans of communes or unions of communes

## Code of January 1, 1913

in so far as this is not already permissible according to article 26, paragraph 1.

PAR. 2. The authority may limit the investment in certain classes of interest-bearing securities to a specified amount.

PAR. 3. If the district of the insurance carrier embraces territories or parts of territories of several federal States, the approval of their highest administrative authority is required for such investments.

PAR. 4. The highest administrative authority may permit, with the right of withdrawing this permission, that temporarily available assets may be invested in another manner.

## ARTICLE 28

PARAGRAPH 1. Arrears shall be collected in the same manner as communal taxes. The staying effect of objections to the obligation of payment is regulated according to the State laws.

PAR. 2. The constitution of the insurance carrier may determine, as far as not already prescribed by the State laws, that the procedure of collection be preceded by a procedure of warning, and that a fee may be collected for such procedure of warning. This fee is collected in the same manner as arrears. The determination of its amount requires the approval of the supervisory authority.

PAR. 3. Arrears have preference of other claims according to article 61, number 1, of the bankruptcy law (*Konkursordnung*).

## ARTICLE 29

PARAGRAPH 1. The claim to arrears lapses, as far as they have not been fraudulently withheld, in two years after the expiration of the calendar year when they are due.

PAR. 2. The claim for refund of contributions lapses in six months after the expiration of the calendar year of their payment, with reservation as to article 1446, paragraph 2, and articles 1462 and 1464.

PAR. 3. The claim for benefit payments from the insurance carrier lapses in four years after they are due, in so far as this law does not prescribe otherwise.

## VI. SUPERVISION

## ARTICLE 30

The right of supervision of the supervisory authority consists in seeing that the law and constitution are observed.

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Code of January 1, 1913

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## ARTICLE 31

PARAGRAPH 1. The supervisory authority may examine at any time the business and accounting management of the insurance carrier.

PAR. 2. The members of its administrative bodies, its district agents (*Vertrauensmänner*), officials, and employes must produce, on demand, to the supervisory authority or its representatives all books, bills, vouchers, and records, and also documents, securities, and assets in their custody, and give all information demanded in the execution of the right of supervision.

PAR. 3. The supervisory authority may require the persons specified in paragraph 2, under reservation of article 985, paragraph 2, to observe the law and the constitution, by fines not to exceed 1,000 marks [\$238].

## ARTICLE 32

The supervisory authority may demand that the administrative bodies be called into session; and if such demand is not complied with, may themselves call meetings and take charge of the proceedings.

## ARTICLE 33

The supervisory authority decides, without derogation of the rights of third parties and as far as the law does not prescribe otherwise, in disputes as to the rights and obligations of the administrative bodies, as to the interpretation of the constitution and as to the validity of elections.

## ARTICLE 34

PARAGRAPH 1. Subject to the supervision are also convalescent homes, medical institutions, and sanatoria (*Genesungsheime, Heil- und Pflegeanstalten*) created and maintained by the insurance carrier.

PAR. 2. The supervisory authority may in its inspections call to its assistance representatives of employers and of the insured persons.

## SECTION THREE.—INSURANCE AUTHORITIES

## I. GENERAL PROVISIONS

## ARTICLE 35

PARAGRAPH 1. The public authorities of the imperial insurance are—

The local insurance offices (*Versicherungsämter*) (arts. 36 to 60);

The superior insurance offices (*Oberversicherungsämter*) (arts. 61 to 82);

The Imperial Insurance Office (*Reichsversicherungsamt*) and the State insurance offices (*Landsversicherungsämter*) (arts. 83 to 109).

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Code of January 1, 1913

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PAR. 2. As far as this law does not regulate the business management and the procedure of the insurance authorities, it shall be done, with reservation of article 109, paragraph 1, by imperial decree with the approval of the Federal Council.

## II. LOCAL INSURANCE OFFICES

### *1. Establishment*

#### ARTICLE 36

PARAGRAPH 1. In each inferior administrative authority there shall be established a section for workmen's insurance (local insurance office). The highest administrative authority may specify that there shall be established for the districts of several inferior administrative authorities a joint local insurance office.

PAR. 2. The State governments of several federal States may agree to establish for their territories or parts thereof a joint local insurance office in an inferior administrative authority.

#### ARTICLE 37

PARAGRAPH 1. The local insurance offices take cognizance of the business of the imperial insurance according to the provisions of this law, and impart information in affairs pertaining to the imperial insurance.

PAR. 2. They may support the insurance carriers in the latter's affairs according to the provisions of this law.

PAR. 3. The State government may assign to the local insurance offices other duties pertaining to miners' insurance.

#### ARTICLE 38

In federal States in which the composition of the State authorities does not permit of the establishment of local insurance offices at the inferior administrative authorities and where there exists only a superior insurance office, the local insurance offices can also be established as independent authorities. The highest administrative authority shall specify the details herewith.

### *2. Composition*

#### ARTICLE 39

PARAGRAPH 1. The director of the inferior administrative authority is the president of the local insurance office. One or more permanent substitutes of the president are to be appointed. Any person qualified



Code of January 1, 1913

by education and experience in workmen's insurance affairs may be appointed a substitute.

PAR. 2. The appointment requires the approval of the superior insurance office, in so far as the permanent substitutes are not appointed according to State law in the same manner as the higher administrative officials.

PAR. 3. If the local insurance office is created in a communal authority, the substitutes are appointed by the president of the union of communes whose district contains that of the local insurance office. Where the State law prescribes a confirmation for the election of higher communal officials, it is also applicable to the appointment of substitutes for the president of the local insurance office.

## ARTICLE 40

PARAGRAPH 1. In the cases specified by the law there shall be called in representatives of the insurance (*Versicherungsvertreter*) as associates (*Beisitzer*) of the local insurance office.

PAR. 2. They shall be selected one-half from the employers and one-half from the insured persons.

## ARTICLE 41

PARAGRAPH 1. Their total number must be at least 12; with the approval of the superior insurance office, the number may be augmented by the local insurance office, or by the former after a hearing of the local insurance office.

PAR. 2. A representative of the insurance shall not also be a salaried official of the local insurance office, or a representative of the insurance at another local insurance office, or an associate in a superior insurance office, or a nonpermanent member of the imperial or of a State insurance office.

## ARTICLE 42

PARAGRAPH 1. Representatives of the insurance are elected by the members of the directorates of those sick funds which have at least 50 members in the district of the local insurance office.

PAR. 2. The members of the directorates of the three groups of funds mentioned herewith participate in the election in so far as they have at least 50 members in the district of the local insurance office; of the substitute funds, and funds located outside of the local insurance office, moreover only if they notify in due time the person in charge of the election of their participation and prove the number of their members in this district; these three groups of funds are—

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Code of January 1, 1913

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1. The miners' sick funds;
2. The substitute sick funds;
3. The seamen's funds, and other associations of seamen for the preservation of their rights, approved by the authorities.

PAR. 3. In place of the representatives of the insured persons in the directorate, the votes shall be cast by—

In the case of the miners' sick funds, the elders of the miners' sick funds competent for the district of the local insurance office;

In the case of the substitute funds which have local administrative offices, the business managers of the local administrations competent for the district of the local insurance office.

#### ARTICLE 43

The number of votes of a fund depends on its number of members in the district of the local insurance office, and shall be determined by the latter before each election. The number of votes shall be evenly divided among the members of the directorates and among the persons entitled to vote in their place according to article 42, paragraph 3.

#### ARTICLE 44

PARAGRAPH 1. In the directorates of the funds the members who are employers take part only in the election of representatives of the employers, the members who are insured persons in the election of representatives of the insured persons.

PAR. 2. Directorates which contain no employers, participate only in the election of the representatives of the insured persons.

PAR. 3. In the case of funds of the kind designated in article 42, paragraph 2, which have no representatives of the insured persons in the directorate, the voting is done by other workmen's representatives who are in the fund.

PAR. 4. Whatever relates to the directorates is also applicable to the persons entitled to vote in their place according to article 42, paragraph 3.

#### ARTICLE 45

PARAGRAPH 1. The voting is done by written ballot and on the principle of proportional representation. The highest administrative authority decrees the election regulations.

PAR. 2. The president of the local insurance office shall conduct the election.

PAR. 3. Election disputes are decided finally by the superior insurance office.

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Code of January 1, 1913

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## ARTICLE 46

PARAGRAPH 1. For the representatives of the insurance, substitutes are specified in the same manner according to need.

PAR. 2. Substitutes replace representatives of the insurance who leave before the expiration of their terms.

## ARTICLE 47

PARAGRAPH 1. Only men who reside or have the seat of their establishment or are employed in the district of the local insurance office, and who are not ineligible according to article 12, are eligible.

PAR. 2. Only insured persons, their employers, and the latter's managers of establishments with power of attorney are eligible. Insured persons are accredited to the employers, if they regularly employ more than two persons subject to insurance.

PAR. 3. In the case of local insurance offices on the sea coast, navigators of practical experience who are not shipowners, or managers of ship-owning establishments (shipping agents, arts. 492 to 499 of the Commercial Code), or who do not hold a power of attorney, may also be elected as representatives of the insured persons.

## ARTICLE 48

At least one-half of the representatives of the insurance must be participants in the accident insurance.

## ARTICLE 49

PARAGRAPH 1. At least one-third of the representatives of the insurance shall reside or be employed at the seat of the local insurance office itself, or not more than 10 kilometers [6.21 miles] distant from it.

PAR. 2. The principal branches of industry, especially agriculture, and the different parts of the district shall be considered in the election.

PAR. 3. The highest administrative authority may decree special or exceptional provisions herewith.

## ARTICLE 50

PARAGRAPH 1. Articles 16, 17, and 22 are correspondingly applicable; but the local insurance office determines the admissibility of other reasons for declining.

PAR. 2. As long and in so far as no election takes place, or the persons elected refuse to perform their duties, the president of the local insurance office appoints representatives from the number of eligible persons.

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Code of January 1, 1913

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## ARTICLE 51

PARAGRAPH 1. Whoever declines the election or appointment without a permissible reason, may be punished by the president of the local insurance office with a fine not to exceed 50 marks [\$11.90].

PAR. 2. The local insurance office may release a representative from his office if a sufficient reason exists.

PAR. 3. On appeal the superior insurance office (decision chamber) decides finally.

## ARTICLE 52

PARAGRAPH 1. If facts become known concerning a representative of the insurance which prove his ineligibility or which show that he is guilty of malfeasance of his office, he may be removed from his office by the president.

PAR. 2. On appeal the superior insurance office (decision chamber) decides finally.

## ARTICLE 53

PARAGRAPH 1. The president of the local insurance office obligates the representatives of the insurance to the faithful discharge of their duties.

PAR. 2. The president may punish a representative who fails to perform his duties with a fine not to exceed 30 marks [\$7.14] and on repetition not to exceed 100 marks [\$23.80]. He must remit the fine if afterwards a sufficient excuse is established.

PAR. 3. On appeal the Imperial Insurance Office (decision chamber) decides finally.

## ARTICLE 54

PARAGRAPH 1. The representatives administer their office without compensation as an honorary office.

PAR. 2. The local insurance office shall reimburse them for their cash expenditures.

PAR. 3. In addition it shall grant to the representatives of the insured persons reimbursement for lost earnings, or in place thereof a lump sum for their loss of time. It may also allow such a lump sum to the representatives of the employers. The lump sums require the approval of the superior insurance office (decision chamber).

## ARTICLE 55

The local insurance office may assign specified official duties to the representatives as its district agents.

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Code of January 1, 1913

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*3. Committees*

## ARTICLE 56

PARAGRAPH 1. Each local insurance office creates one or more judgment committees for matters which this law assigns to the judgment procedure (*Spruchverfahren*).

PAR. 2. The judgment committee (*Spruchausschuss*) consists of the president of the local insurance office and of one representative for the employers and one for the insured persons.

## ARTICLE 57

PARAGRAPH 1. Each local insurance office creates a decision committee (*Beschlussausschuss*) for matters which this law assigns to the decision procedure (*Beschlussverfahren*).

PAR. 2. The decision committee consists of the president of the local insurance office and of two representatives of the insurance. Of these, the representatives of the employers and of the insured persons each elect one from among themselves, together with at least one substitute; the elections of the two parties shall be separate, shall be by simple majority of votes, and the term of office shall be four years.

## ARTICLE 58

The highest administrative authority can specify how far the local insurance office may call in for the decision procedure technical government and communal officials of its district as advisors (*Beiräte*) with consultative vote.

*4. Costs*

## ARTICLE 59

PARAGRAPH 1. The federal State defrays all costs of the local insurance office. If the local insurance office is created in a communal authority, they are defrayed by the union of communes whose district embraces that of the local insurance office. The highest administrative authority determines the division of costs, if there is a joint local insurance office created for the districts of several inferior administrative authorities.

PAR. 2. With the exception of the allowances of the insurance representatives, the insurance carriers have to defray the cash expenditures originating from judicial matters (arts. 1591 to 1674) so far as the cash expenditures are not to be defrayed according to paragraph 3.

PAR. 3. Fines, according to article 51, paragraph 1, article 53, paragraph 2, article 1577, paragraph 1, article 1617, paragraph 1, article 1626, paragraph 1, article 1652, paragraph 3, and article 1664, par-

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Code of January 1, 1913

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agraph 1, as well as specially imposed costs of procedure (art. 1802) and contributions according to article 60, accrue to the treasury of the federal State or of the union of communes (par. 1).

#### ARTICLE 60

PARAGRAPH 1. In case of the assignment of duties connected with the miners' insurance, to a local insurance office according to article 37, paragraph 3, the miners' associations or miners' funds affected must pay an appropriate contribution toward the costs of the local insurance office.

PAR. 2. The superior insurance office determines the contributions; an appeal against the determination to the highest administrative authority is permissible.

### III. SUPERIOR INSURANCE OFFICES

#### *I. Establishment*

#### ARTICLE 61

PARAGRAPH 1. According to the provisions of this law, the superior insurance offices take cognizance of the business of the imperial insurance as higher judicial, decision, and supervisory authorities.

PAR. 2. The State government may assign to them also other duties connected with the miners' insurance.

#### ARTICLE 62

PARAGRAPH 1. The superior insurance office is as a rule established for the district of a higher administrative authority.

PAR. 2. The highest administrative authority may delimit the district differently.

PAR. 3. The State governments of several federal States may establish for their territories or parts thereof a joint superior insurance office.

#### ARTICLE 63

PARAGRAPH 1. The highest administrative authority may also establish superior insurance offices for—

1. The administration of establishments and service establishments of the Empire or of the federal States which have their own establishment sick funds;
2. Groups of establishments, for whose employees special institutes (*Sonderanstalten*) provide the invalidity and survivors' insurance;

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Code of January 1, 1913

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3. Groups of establishments belonging to miners' associations or miners' sick funds.

PAR. 2. For these special superior insurance offices article 62, paragraph 1, and articles 72, 73, and 80 are not applicable. In other respects the provisions relating to superior insurance offices are applicable to them as far as articles 70, 75, and 81 do not prescribe otherwise.

PAR. 3. The highest administrative authority specifies their competence.

#### ARTICLE 64

The highest administrative authority may attach the superior insurance offices to superior imperial or State authorities, or may establish them as independent State authorities.

#### ARTICLE 65

PARAGRAPH 1. The highest administrative authority specifies the seat of the superior insurance office.

PAR. 2. For a joint superior insurance office the approval of the State governments affected is required.

#### ARTICLE 66

The highest administrative authority communicates to the Imperial Insurance Office for publication the seat and district of all superior insurance offices of their territory within one month from their establishment or change.

#### ARTICLE 67

If a superior insurance office is attached to a superior imperial or State authority, the director of the latter is at the same time the president of both. A director of the superior insurance office is appointed as his permanent substitute.

### 2. Composition

#### ARTICLE 68

The superior insurance office is composed of members and of associates.

#### ARTICLE 69

PARAGRAPH 1. The superior insurance office shall appoint, at the same time, in addition to the director at least one member as his substitute.

PAR. 2. At least one substitute shall be appointed for each member.

PAR. 3. The members shall be appointed to the principal position or

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Code of January 1, 1913

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for the term of the principal position from the number of public officials, the director either for life or according to State law, without recall.

#### ARTICLE 70

The highest administrative authorities may specify that other official duties shall be assigned to the director, and that the other members, as well as in the case of special superior insurance offices the director, exercise their office as a subsidiary occupation.

#### ARTICLE 71

PARAGRAPH 1. The associates shall be elected one-half from the employers and one-half from the insured persons.

PAR. 2. The number of associates is 40; it may be increased or decreased by the highest administrative authority.

PAR. 3. An associate may not at the same time be a nonpermanent member of the Imperial Insurance Office or of a State insurance office.

#### ARTICLE 72

PARAGRAPH 1. The industrial accident associations, the navigation accident association, and the executive authorities specify for each superior insurance office an accident association or executive authority to represent their right to vote (art. 73, par. 1.). If there is no agreement, the Imperial Insurance Office shall specify the particulars.

PAR. 2. The names of these representative associations and representative executive authorities are to be communicated to the Imperial Insurance Office and to be published by it.

#### ARTICLE 73

PARAGRAPH 1. The associates from the employers shall be elected one-half by the employer members in the committee of the competent insurance institute and one-half by the directorates of the competent agricultural associations and of the representative accident association; if representative executive authorities have been specified, they shall vote in place of the directorate of the representative association. The Imperial Insurance Office decrees the election regulations.

PAR. 2. The associates from the insured persons are elected by the representatives of the insured persons of the local insurance offices of the district of the superior insurance office according to the principle of proportional representation. The number of votes of the representatives of the insured persons is determined by the superior insurance office according to the number of sick-fund members of the district of their local in-



insurance office (art. 43). The highest administrative authority decrees the election regulations.

## ARTICLE 74

PARAGRAPH 1. The voting is done by written ballot. The director of the superior insurance office conducts the election.

PAR. 2. Election disputes are decided finally by the superior insurance office (decision chamber).

## ARTICLE 75

PARAGRAPH 1. The employer associates for a special superior insurance office are elected by the employer members of the directorate either of the establishment sick fund, or of the special institute, or of the miners' associations or miners' funds; if there are no representatives of the employers in a directorate, the voting is done by the representatives of employers who belong to another administrative body.

PAR. 2. The associates from the insured persons are elected according to the principles of proportional representation by the committee members of insured persons, either of the establishment sick fund or the special institute, or by the elders of the miners' fund; as far as miners' associations or miners' funds are admitted as special institutes or belong to a special institute, the voting is also done by the elders of the miners' funds; if a special institute has no committee, the voting is done by the representatives of the insured who belong to another administrative body.

PAR. 3. The highest administrative authority specifies the particulars.

## ARTICLE 76

Articles 46 to 48, article 49, paragraphs 2 and 3, and articles 50 to 54 are correspondingly applicable for the election, rights, and duties of associates and their substitutes. Appeals (art. 51, par. 3, art. 52, par. 2, and art. 53, par. 3) are to be directed to the highest administrative authority; fines (art. 51, par. 1, and art. 53, par. 2) may be imposed not to exceed 300 marks [\$71.40].

3. Chambers (*Kammern*)

## ARTICLE 77

PARAGRAPH 1. Each superior insurance office creates one or more judgment chambers (*Spruchkammern*) for matters assigned by this law to judgment procedure (*Spruchverfahren*).

PAR. 2. The judgment chamber is composed of a member of the su-

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Code of January 1, 1913

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perior office, as president, and of two associates of the employers and of two of the insured persons.

#### ARTICLE 78

PARAGRAPH 1. Each superior insurance office creates one or more decision chambers (*Beschlusskammern*) for matters which this law assigns to the decision procedure (*Beschlussverfahren*).

PAR. 2. The decision chamber is composed of the president of the superior insurance office, of a second member, and of two associates. Of these, the associates of the employers and of the insured persons elect one each, and also at least one substitute each, from their midst, and the election shall be according to a simple majority of votes, for a term of four years.

PAR. 3. In case of a tie, the president casts the deciding vote.

#### 4. Supervision—Costs

#### ARTICLE 79

PARAGRAPH 1. The highest administrative authority exercises the supervision over the superior insurance office.

PAR. 2. They assign to it the necessary employees and provide its business rooms.

PAR. 3. The bureau, clerical, and subordinate employees have the rights and duties of imperial or State officials, except when employed as substitutes, or temporarily, or in preparatory work, the State government determines the particulars herewith.

PAR. 4. The president obligates them to the conscientious discharge of their official duties, so far as they are not already obligated by an oath of office.

#### ARTICLE 80

PARAGRAPH 1. The federal State defrays all costs of the superior insurance office.

PAR. 2. The insurance carriers have to pay a lump sum for each case under adjudication in which they are concerned; if in a case costs are to be defrayed according to paragraph 4, the lump sum is correspondingly reduced.

PAR. 3. The lump sums shall be determined by the Federal Council uniformly for the Empire for each branch of the workmen's insurance, and shall be revised every four years. They shall cover half of the costs of the superior insurance offices without the allowances of members and their substitutes and without the fees (art. 1803).

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Code of January 1, 1913

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PAR. 4. The fees according to article 1803, the fines according to articles 76 and 1679, as well as the specially imposed costs of procedure (art. 1802), and the contributions according to article 82, accrue to the treasury of the federal State.

#### ARTICLE 81

PARAGRAPH 1. All costs of special superior insurance offices created for establishments of the Empire or of a State are to be defrayed by the administrations of the establishments. The receipts (art. 80, par. 4) accrue to the latter.

PAR. 2. All costs of the other special superior insurance offices are to be refunded after deduction of the receipts (art. 80, par. 4) by the insurance carriers participating to the federal State.

#### ARTICLE 82

If, according to article 61, paragraph 2, matters of the miners' insurance are assigned to a superior insurance office, then the miners' associations (*Knappschaftsvereine*) and miners' funds (*Knappschaftskassen*) affected have to make appropriate contributions to its costs. The highest administrative authority determines the contributions.

### IV. IMPERIAL INSURANCE OFFICE—STATE INSURANCE OFFICES

#### 1. Jurisdiction—Seat

#### ARTICLE 83

PARAGRAPH 1. The Imperial Insurance Office, according to the provisions of this law, takes cognizance of the affairs of the imperial insurance as the highest authority on judicial, decision, and supervisory matters.

PAR. 2. It has its seat in Berlin.

#### ARTICLE 84

Its decisions are final as far as the law does not provide otherwise.

#### 2. Composition

#### ARTICLE 85

The Imperial Insurance Office is composed of permanent and non-permanent members.

#### ARTICLE 86

PARAGRAPH 1. The Emperor appoints the president and the other permanent members for life on proposal of the Federal Council.

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Code of January 1, 1913

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PAR. 2. From the permanent members the Emperor appoints the directors and the presidents of senates.

PAR. 3. The imperial chancellor appoints the other members.

## ARTICLE 87

PARAGRAPH 1. The Imperial Insurance Office has 32 nonpermanent members. The Federal Council elects 8 of these, of which at least 6 must be from its membership; 12 are elected as representatives of the employers and 12 as representatives of the insured persons.

PAR. 2. According to need, substitutes shall be elected for the employers and the insured persons in the same manner. If members retire before the expiration of their term of office, the substitutes take their place in the order in which they were elected.

## ARTICLE 88

PARAGRAPH 1. The employers and the insured persons are elected separately by written ballot under the direction of the Imperial Insurance Office, the insured persons according to the principles of proportional representation, the employers according to a simple majority of votes, in which a tie shall be decided by lot.

PAR. 2. The proportion of votes of each electing body is determined by the Federal Council according to the number of their insured persons. It may specify the manner of electing by districts.

PAR. 3. The Imperial Insurance Office publishes the result of the election.

## ARTICLE 89

Of the 12 employers, 6 are elected by the employer members belonging to the committees of insurance institutes and of the corresponding representations of the special institutes, as follows:

Four from the field of the industrial accident insurance.

Two from that of the agricultural accident insurance.

## ARTICLE 90

The other 6 employers shall be elected by the directorates of the accident associations and by the executive authorities, and, furthermore, from the field of each of them, as follows:

Four from the industrial associations and executive authorities, one of whom shall be from the navigation accident association;

Two from the agricultural accident associations and executive authorities.

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Code of January 1, 1913

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## ARTICLE 91

The 12 insured persons shall be elected by the insured persons who are associates of the superior insurance offices, as follows:

Eight from the field of the industrial and navigation accident insurance, of whom one shall be from the field of the navigation accident insurance;

Four from the field of the agricultural accident insurance.

## ARTICLE 92

Only men are eligible who are not excluded according to article 12.

## ARTICLE 93

PARAGRAPH 1. The following are eligible as employers: The members of accident associations who are entitled to vote, their legal representatives, the managers of their establishments with power of attorney, and the officials of establishments for which an executive authority has been appointed.

PAR. 2. Moreover, there are eligible, according to article 89, employers who are members of the committee of an insurance institute or of the corresponding representation of a special institute.

## ARTICLE 94

Eligible as insured persons are persons insured against accident according to this law; furthermore, insured persons who are members of the committee of an insurance institute, even if they are not insured against accident; and for the field of the navigation accident insurance, navigators of practical experience who are not shipowners, managers of shipowning establishments, or authorized representatives thereof.

## ARTICLE 95

Article 49, paragraph 2, and articles 50 to 52, article 53, paragraphs 2 and 3, are correspondingly applicable; but the Imperial Insurance Office (decision senate), however, is competent for punishment (art. 51, par. 1, and art. 53, par. 2) and removal from office (art. 52). Fines (art. 51, par. 1, and art. 53, par. 2) may be imposed not to exceed 500 marks (\$119).

## ARTICLE 96

PARAGRAPH 1. The nonpermanent members receive a yearly allowance for their participation in the work and sessions of the Imperial Insurance Office, and, in so far as they reside outside of Berlin, refund of traveling

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Code of January 1, 1913

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expenses coming and returning, according to the rates in force for advisory councilors (*Vortragende Rate*) of the highest imperial authorities.

PAR. 2. Substitutes receive the same refund of traveling expenses and a per diem allowance of 18 marks (\$4.28).

#### ARTICLE 97

The imperial chancellor obligates the nonpermanent members elected by the Federal Council, the president of the Imperial Insurance Office obligates the other members and their substitutes, before they enter on their duties, to the faithful discharge of their duties.

#### 3. *Senates*

#### ARTICLE 98

PARAGRAPH 1. The Imperial Insurance Office forms judgment senates (*Spruchsenate*) for matters which this law assigns to judgment procedure.

PAR. 2. The judgment senate is composed of a president, a nonpermanent member elected by the Federal Council, a permanent member, two officials of the judiciary called in for this purpose, an employer, and an insured person. A permanent member may take the place of the member elected by the Federal Council.

#### ARTICLE 99

PARAGRAPH 1. The president, a director, or a president of the senate presides in the judgment senate. The imperial chancellor may intrust another permanent member with the chairmanship.

PAR. 2. The imperial chancellor summons the officials of the judiciary to the judgment senate.

#### ARTICLE 100

PARAGRAPH 1. The Imperial Insurance Office creates decision senates (*Beschlussenate*) for matters which this law assigns to the decision procedure.

PAR. 2. The decision senate consists of the president, or of one director, or of a senate president as presiding officer, and of the following: A nonpermanent member elected by the Federal Council, a permanent member, an employer, and an insured person. A permanent member may take the place of the member elected by the Federal Council.

#### ARTICLE 101

PARAGRAPH 1. The Imperial Insurance Office creates the great senate (*Grossen Senat*) for the duties which this law assigns to that body.

PAR. 2. With reservation of enlargement according to article 1718, paragraph 2, the great senate consists of the president or his representative, two members elected by the Federal Council, two permanent members, two officials of the judiciary, two employers, and two insured persons.

## ARTICLE 102

PARAGRAPH 1. If all the members of the Imperial Insurance Office elected by the Federal Council are prevented from serving, permanent members shall be called in to take their place.

PAR. 2. The other members of the great senate and at least two substitutes for each shall be designated in advance for one fiscal year according to detailed provision of imperial decree (art. 35, par. 2). Of these there shall be designated two permanent members and two officials of the judiciary and their substitutes for each of the following subjects:

Sickness insurance;

Accident insurance;

Invalidity, and survivors' insurance.

## 4. Accounting bureau—Costs

## ARTICLE 103

PARAGRAPH 1. An accounting bureau (*Rechnungstelle*) is to be established in the Imperial Insurance Office.

PAR. 2. It executes the work assigned to it by this law. It supports the Imperial Insurance Office in its accounting and technical insurance work. The Imperial Insurance Office specifies the nature of the information to be furnished to it for this purpose by the insurance carriers.

## ARTICLE 104

PARAGRAPH 1. The Empire bears the costs of the Imperial Insurance Office, inclusive of the costs of procedure.

PAR. 2. The fines according to articles 95 and 1698, paragraph 1, article 1701, paragraph 1, as also the specifically imposed costs of procedure (art. 1802), accrue to the imperial treasury.

## 5. State insurance offices

## ARTICLE 105

PARAGRAPH 1. A State insurance office which was established before this law, for the territory of a federal State, may remain in existence as long as there are under its jurisdiction at least four superior insurance offices.

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Code of January 1, 1913

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PAR. 2. As far as this law so prescribes, the State insurance office takes the place of the Imperial Insurance Office for this territory.

PAR. 3. The costs of the State insurance office are borne by the federal State.

#### ARTICLE 106

PARAGRAPH 1. The State insurance office consists of permanent and nonpermanent members.

PAR. 2. The State government appoints the permanent members. They are to be appointed either for life or according to the State law, without recall as far as their appointment is for the actual office.

PAR. 3. At least eight representatives of the employers and eight representatives of the insured persons shall be elected under the direction of the State insurance office, by written ballot, as nonpermanent members. One-half of them shall come from the agricultural and the other half from the industrial accident insurance.

#### ARTICLE 107

PARAGRAPH 1. Article 87, paragraph 2, and articles 88 to 97, are correspondingly applicable for the election, rights, and duties of the members, in so far as article 106, paragraph 3, or the following pages do not provide otherwise.

PAR. 2. The highest administrative authority takes the place of the Federal Council and of the imperial chancellor.

PAR. 3. The employers are elected by—

1. The employer members in the committees of the insurance institutes and in the corresponding representative bodies of special institutes, created for or embracing the territory of the federal State.
2. The directorates of the accident associations and the executive authorities embracing establishments with their seat in the territory of the federal State. Where this territory is identical with the district of one or more sections, the section directorates elect in place of the association directorates.

PAR. 4. The insured persons are elected by the insured persons who are associates of those superior insurance offices which are created for or embrace the territory of the federal State.

PAR. 5. The State government determines the proportion of votes according to the number of insured persons.

#### ARTICLE 108

PARAGRAPH 1. The removal of a nonpermanent member is decided upon by the State insurance office.



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Code of January 1, 1913

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PAR. 2. Articles 98 to 100, and 104, paragraph 2, are correspondingly applicable for the State insurance office; the highest administrative authority takes the place of the Federal Council and of the imperial chancellor; the treasury of the federal State takes the place of the imperial treasury.

#### ARTICLE 109

PARAGRAPH 1. As far as this law does not regulate the business management and the procedure of the State insurance office, it is done by the State government.

PAR. 2. The State government specifies the allowances to nonpermanent members.

### SECTION FOUR.—OTHER GENERAL PROVISIONS

#### I. AUTHORITIES

#### ARTICLE 110

The highest administrative authority may transfer to other authorities some of the duties and rights assigned to them by this law.

#### ARTICLE 111

PARAGRAPH 1. The highest administrative authority specifies—

1. Which State authority and which authorities and representative bodies of unions of communes and of communes are competent for the duties which this law assigns to the superior and inferior administrative authorities, to the local police authorities, to the communal authorities, to the unions of communes, and to the communes, as well as their authorities and representatives.
2. Which unions are to be considered as unions of communes; a single commune is only then considered a union of communes in the meaning of law if so specified by the highest administrative authority.
3. Whether and which local business of the imperial insurance shall be transacted by communal authorities in place of the local insurance offices.

PAR. 2. The specifications shall be published in the Reichsanzeiger.

#### ARTICLE 112

If at least half the members of the administrative bodies are composed of representatives of the insurance elected by secret ballot, the highest

## Code of January 1, 1913

administrative authority may assign duties of the local insurance office to administrative bodies of—

Miners' associations or of miners' funds.

Establishment sick funds for establishment administrations and service establishments of the Empire and of the federal States.

Special institutes of the Empire and federal States.

Judicial duties may not be transferred.

## ARTICLE 113

PARAGRAPH 1. If an insurance authority, an insurance carrier, or an establishment embraces territories of several federal States, the State government or the highest administrative authority of the federal State of its seat, takes cognizance of the powers which this law assigns to the State government or to the highest administrative authority as far as is not otherwise prescribed.

PAR. 2. If the State governments or the highest administrative authorities do not agree, where this law prescribes their coöperation, the Federal Council decides between the State governments, and the imperial chancellor between the administrative authorities. The same is applicable if they do not agree as to their competency, or in case of paragraph 1, as to the seat.

PAR. 3. The imperial chancellor exercises the rights of the highest administrative authority for the establishments of the Empire and for their special insurance authorities and for insurance carriers.

## ARTICLE 114

The provisions of this law are also applicable for the independent manors and marches (*ausmärkische Bezirke*). The lord of the manor or the march authorities (*Gemarkungsberechtigte*) exercise there the rights and duties in place of the communes.

## II. LEGAL ASSISTANCE

## ARTICLE 115

PARAGRAPH 1. The public authorities are required to comply with all requests pertaining to the execution of this law coming to them from insurance and other public authorities and from administrative bodies of the insurance carriers, especially to execute all decisions which may be carried out.

PAR. 2. Supervisory transactions as described in article 347, paragraph 4, article 404, paragraph 3, and articles 888, 1465, and 1470, may be demanded only under the conditions named therein.

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Code of January 1, 1913

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## ARTICLE 116

The administrative bodies of the insurance carriers have to give this legal assistance to each other as well as to the authorities and poor-law unions.

## ARTICLE 117

Per diem allowances, traveling expenses, fees for witnesses and experts, and all other cash expenditures arising out of legal assistance, must be paid by the insurance carriers as their own administrative costs.

## III. BENEFITS

## ARTICLE 118

Benefits granted according to this law or to supplementary State laws, and relief given in their place through the transfer of the claims, are not public charities.

## ARTICLE 119

PARAGRAPH 1. The claims of the persons entitled thereto may, with reservation of article 1325, only be legally transferred, assigned, or attached—

1. To cover an advance on his claims received by the person entitled to benefits either from the employer or from an administrative body of the insurance carrier or one of its members, before the allowance of the benefits.
2. To cover claims designated in article 850, paragraph 4, of the Code of Civil Procedure (*Zivilprozessordnung*).
3. To cover claims from communes, poor-law unions, and the employers and funds representing them, entitled to reimbursement according to article 1531; transfer, assignment, and attachment are only permissible up to the amount of legal claims for reimbursement.
4. To cover arrears of contributions which have been overdue not longer than three months.

PAR. 2. As an exceptional measure, the person entitled thereto may also transfer the claim in other cases, wholly or partly, to other persons, with the approval of the local insurance office.

## ARTICLE 120

PARAGRAPH 1. To inebriates not under guardianship, benefits in kind may be granted wholly or partly. This must be done on demand of a poor-law union affected or of the communal authority of the place of resi-

## Code of January 1, 1913

dence of the inebriate. In the case of inebriates under guardianship, the granting of the benefits in kind is only permissible with the approval of the guardian. On his demand it must be done.

PAR. 2. The commune where the claimant resides grants the benefits in kind. The claim to cash benefits is transferred to the commune up to the value of the payments in kind received. Benefits in kind may also be granted by placing him in a sanatorium for inebriates or with approval of the commune, through the intervention of an institution for inebriates.

PAR. 3. A balance of cash benefits is to be assigned to the husband or wife of the person entitled to compensation, his children or his parents, or, in case he has none, to the commune to be used for him.

## ARTICLE 121

PARAGRAPH 1. The local insurance office (decision committee) decrees the order after a hearing of the communal authority and of the person entitled to benefits and communicates it in writing to them and to the insurance carrier. It decides in disputes between the communal authority and the person entitled to benefits.

PAR. 2. On appeal the superior insurance office decides finally.

PAR. 3. When the case relates to cash benefits of the accident or of the invalidity and survivors' insurance the insurance carrier notifies the Post Office Department if the claim to cash benefits has been finally transferred to the commune.

## IV. MEDICAL TREATMENT

## ARTICLE 122

PARAGRAPH 1. The medical treatment in the meaning of this law shall be given by registered physicians, and for dental diseases by registered dental surgeons (*approbierte Zahnärzte*) (art. 29 of the Industrial Code). It includes assistance of other persons as barber surgeons, midwives, medical helpers, medical attendants, nurses, masseurs, etc., as also dental assistants (*Zahntechniker*), but only in the case of an order by the physician (or dental surgeon) or in urgent cases, if no registered physician (or dental surgeon) is available.

PAR. 2. The highest administrative authority may specify how far otherwise assistants may give independent treatment within the limits of their powers as authorized by the State.

## ARTICLE 123

In the case of dental diseases, but excluding diseases of the mouth or gums, treatment may be given with the approval of the insured person

Code of January 1, 1913

by dental assistants in addition to dental surgeons. The highest administrative authority specifies how far dental assistants may give otherwise independent treatment in case of such dental diseases. This authority may specify how far this may also be done by medical helpers and medical attendants. It specifies further who is to be considered a dental assistant in the meaning of this law.

## V. TIME LIMITS

## ARTICLE 124

PARAGRAPH 1. If the beginning of a time limit is determined by an event or point of time, the time limit begins with the day following the event or the point of time,

PAR. 2. If a time limit is extended, the new time limit begins with the expiration of the old one.

## ARTICLE 125

PARAGRAPH 1. A time limit determined by days ends with the expiration of its last day, a time limit determined by weeks or months with the expiration of that day of the last week or the last month which corresponds according to name or number to the day on which the event or the point of time falls.

PAR. 2. In case the corresponding day is missing in the last month, the time limit ends with the month.

## ARTICLE 126

In case it is not necessary for a period of months or years to be continuous, then the month will be reckoned as having 30 days and the year as having 365 days.

## ARTICLE 127

PARAGRAPH 1. In case the day set for the statement of intention or for a payment or for the expiration of a time limit falls on a Sunday or a general holiday recognized by the State in the place of declaration or of payment, then the succeeding working day takes its place.

PAR. 2. This provision is not applicable for the duration of benefits to which an insurance carrier is bound.

## ARTICLE 128

PARAGRAPH 1. So far as this law does not provide otherwise, legal measures are to be inaugurated within one month after delivery of the contested decision.

## Code of January 1, 1913

PAR. 2. For seamen sojourning outside of Europe this time limit is determined by the office which decreed the contested decision; it must be at least three months from the date of delivery.

## ARTICLE 129

PARAGRAPH 1. So far as this law does not provide otherwise, legal measures shall be inaugurated at the office which has to make the decision.

PAR. 2. The time limit is considered as observed when the legal measures have been received in time by another German authority or by an administrative body of the insurance carrier, or in case of the navigation accident insurance also by a German marine office (*Seemannsamt*) in a foreign country.

PAR. 3. The legal documents are to be delivered immediately to the competent authority.

## ARTICLE 130

Legal measures effect a stay only in cases where the law so provides.

## ARTICLE 131

PARAGRAPH 1. In case an interested person has been kept by natural events or by other unavoidable accidents from observing the legal time limit of procedure, he shall on application be granted reinstatement to his previous status.

PAR. 2. On application reinstatement will also be granted if the document received too late has been mailed at least three days before the expiration of the time limit.

## ARTICLE 132

PARAGRAPH 1. In the case of article 131, paragraph 1, application for reinstatement must be made within a period, the duration of which shall be determined by the duration of the period lapsed. The period begins with the day on which the preventing cause was removed.

PAR. 2. In cases of article 131, paragraph 2, application for reinstatement shall be made within one month. The period begins with the day on which the interested party learns that he has not observed the time limit.

PAR. 3. No application for reinstatement may be made after the expiration of two years from the end of the time limit.

## ARTICLE 133

PARAGRAPH 1. The application for reinstatement shall—

1. State the facts forming the basis for the reinstatement;
2. Indicate the means to make these facts evident;

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Code of January 1, 1913

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3. Make good the lapsed transaction if it has not already been done.

PAR. 2: The application is made to the authority where the time limit has lapsed; article 129, paragraphs 2 and 3, are correspondingly applicable. The decision rests with the authority which decides upon the action which has later been made good.

#### ARTICLE 134

PARAGRAPH 1. The procedure concerning the application shall be combined with that concerning the action made good later, but the application may first of all be discussed and decided alone.

PAR. 2. For the decision concerning the admissibility of the application and its contesting, the same provisions are applicable as for the action made good later.

### VI. NOTIFICATIONS

#### ARTICLE 135

PARAGRAPH 1. Notifications which start a time limit may be made by registered letter.

PAR. 2. The postal receipt justifies after two years from its making out, the assumption that delivery has been made within the regular time limit after the mailing.

#### ARTICLE 136

PARAGRAPH 1. Persons not living in Germany must upon demand designate a person authorized to receive notifications.

PAR. 2. If the abode is unknown and a person authorized to receive notifications has not been designated within the time limit set, then an announcement in the business rooms of the authority or of the proper office may take the place of the notification; the time limit must not be less than one month.

### VII. FEES AND STAMP TAXES

#### ARTICLE 137

All proceedings and documents necessary to the insurance carriers and insurance authorities to establish and transact the legal relations between the insurance carriers on the one hand and the employers or insured persons or their survivors on the other, are exempt from fees and stamp taxes, as far as this law does not provide otherwise.

## Code of January 1, 1913

## ARTICLE 138

The same is applicable for proceedings out of court and documents of this kind, and for such nonofficial powers of attorney and official certificates which, according to this law, become necessary for identification and authentication.

## VIII. PROHIBITIONS AND PENALTIES

## ARTICLE 139

PARAGRAPH 1. Employers and their employés, as well as insurance carriers, are prohibited from restricting insured persons in the acceptance or discharge of an honorary office of the imperial insurance, or from injuring them on account of the acceptance or manner of discharge of such an honorary office. The employers and their employés are further prohibited from preventing either wholly or partly, either through agreements or working regulations, the application of the provisions of this law to the injury of the insured persons.

PAR. 2. Agreements conflicting herewith are void.

## ARTICLE 140

Employers or their employés infringing article 139, paragraph 1, shall be punished by fines not to exceed 300 marks [\$71.40] or by imprisonment as far as they are not liable to more severe penalty in accordance with other legal provisions.

## ARTICLE 141

PARAGRAPH 1. The persons named below, if they disclose without authority what they have learned while performing their official duty about diseases or other invalidity of insured persons, or the causes thereof, shall be punished by fines not to exceed 1,500 marks [\$357] or by imprisonment for not more than three months; prosecution shall be instituted only on application of the insured person or of the supervisory authority; these persons are—

A member of an administrative body or an employé of an insurance carrier;

A member or an employé of an insurance authority;

A representative or associate in an insurance authority.

PAR. 2. Other persons for whom this law provides a benefit from an insurance carrier are considered as insured persons.

## ARTICLE 142

PARAGRAPH 1. The following persons, if they disclose business or trade secrets which they have learned while performing their official duties,



shall be punished with fines not to exceed 1,500 marks [\$357], or with confinement in jail:

Persons designated in article 141, paragraph 1;

Special experts according to article 880;

Members of committees for the decision of appeals made under article 1000, paragraph 2, and of protests made under article 1023, paragraph 1.

PAR. 2. If this is done to injure the undertaker, or to procure for themselves or other persons pecuniary advantages, they shall be punished by imprisonment. In addition to the prison sentence they may be punished with the loss of their civic rights and fines not to exceed 3,000 marks [\$714].

PAR. 3. Prosecution in the case mentioned in paragraph 1 shall be instituted only on application of the undertaker.

#### ARTICLE 143

The persons designated in article 142, paragraph 1, shall be punished with imprisonment if they make use of business or trade secrets to the disadvantage of the undertaker or to procure for themselves or other persons a pecuniary advantage. In addition to imprisonment they may be sentenced to the loss of their civic rights and fined not to exceed 3,000 marks [\$714].

#### ARTICLE 144

In cases mentioned in article 142, paragraph 2, or article 143, if there are mitigating circumstances, the punishment shall be a fine not to exceed 3,000 marks [\$714].

#### ARTICLE 145

In the case of officials subject to the rules of service of a State or communal authority, the provisions applicable for them take the place of articles 141 to 144.

#### ARTICLE 146

PARAGRAPH 1. With reservation of article 59, paragraph 3, article 80, paragraph 4, article 104, paragraph 2, article 108, paragraph 2, and articles 914, 1045, and 1224, fines accrue to the treasury of the insurance carrier; those imposed by a court only then when this law so provides.

PAR. 2. Fines, except such as are imposed by a court, shall be collected in the same manner as arrears.

#### ARTICLE 147

Contraventions of this law for which the courts are not competent, expire by limitation in three months, if not punishable with a fine of more

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Code of January 1, 1913

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than 300 marks [\$71.40], otherwise in one year. The period of limitation begins with the day on which the act was committed. It is interrupted by any action directed against the violator by the bodies competent to impose a penalty. With the interruption begins a new period of limitation; it ends at the latest with the expiration of 10 years from the day on which the contravention took place.

## ARTICLE 148

Punishments imposed finally and not decreed by the courts expire by limitation in two years. The period of limitation begins with the day on which the decision became final. It is interrupted by any action directed to the execution of the punishment by the bodies charged with the execution. With the interruption begins a new period of limitation; it ends at the latest with the expiration of four years from the day on which the decision became final.

## IX. LOCAL WAGE RATE

## ARTICLE 149

PARAGRAPH 1. As the local wage rate that rate shall be used which is the daily wage customarily paid in the locality to ordinary day laborers.

PAR. 2. The superior insurance office determines and publishes the local wage rate. The directorates of the insurance institutes affected shall be previously given a hearing; the local insurance office shall express an opinion after having given a hearing to the communal authorities and to the directorates of the sick funds affected.

## ARTICLE 150

PARAGRAPH 1. The local wage rate shall be determined separately for men and for women, for insured persons under 16 years, for those between 16 and 21 years, and for those over 21 years.

PAR. 2. The insured persons under 16 years (juveniles) may be classified as young persons of 14 years and over and children of less than 14 years; apprentices are considered as young persons.

PAR. 3. In other respects the local wage rate as determined uniformly according to the average for the whole district of each local insurance office. Exceptions are permissible when there are considerable differences in the amount of wages in different localities or between city and country.

## ARTICLE 151

PARAGRAPH 1. The local wages are determined at the same time for the whole Empire, at first until December 31, 1914, afterwards always

for four years. Changes in the interim shall only be in force until the next general determination.

PAR. 2. All changes shall come into use only two months after their publication.

#### ARTICLE 152

Before the beginning of each four-year term the imperial chancellor shall publish in the *Zentralblatt für das Deutsche Reich* a list of all determinations in force, and also at least annually a list of changes made in the meantime.

### X. PLACE OF EMPLOYMENT

#### ARTICLE 153

PARAGRAPH 1. The place of employment is the place in which the employment actually takes place.

PAR. 2. For insured persons who are employed at a definite work place (establishment, place of service), this shall be considered also as the place of employment, while they are performing elsewhere pieces of work of short duration for the employer.

PAR. 3. The same is applicable to insured persons who are employed at various times from a definite place of work on single pieces of work in districts of various local or rural sick funds.

PAR. 4. It is further applicable to insured persons who are only employed on single pieces of work outside of the definite work place, if both the latter and their place of employment are situated in the district of the same local insurance office.

#### ARTICLE 154

For employed persons for whom no definite work place is provided, the seat of the establishment is considered as the place of employment.

#### ARTICLE 155

For insured persons who have been engaged by the administration of an establishment for a varied employment to be carried on in different communes, that commune where the immediate management of the work has its seat is to be considered as the place of employment. After a hearing of the interested administrations and communes or unions of communes the superior insurance office can specify otherwise in this regard.

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Code of January 1, 1913

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## ARTICLE 156

For insured persons employed at an agricultural occupation, changeable in various communes, the seat of the establishment (arts. 963 and 964) is considered as the place of occupation.

## XI. LEGISLATION OF FOREIGN COUNTRIES

## ARTICLE 157

PARAGRAPH 1. So far as other countries have put into operation a system of relief corresponding to the imperial insurance, the imperial chancellor, with the approval of the Federal Council and with due regard to reciprocity, may make agreements as to what extent the relief shall be regulated according to the imperial insurance or the relief provisions of the other country for establishments overlapping from the territory of one country into that of another, as well as for insured persons temporarily occupied in the territory of the other country.

PAR. 2. Likewise if there is a reciprocal consideration, the insurance of citizens of a foreign country may be regulated otherwise than according to the provisions of this law, and the operation of the relief of the one country be facilitated in the territory of the other. In these agreements the obligation of the employers to pay contributions according to this law must not be reduced or done away with. The Reichstag must be notified of these agreements.

PAR. 3. These provisions are correspondingly applicable in the case of a relief which takes the place of the imperial insurance.

## ARTICLE 158

With the approval of the Federal Council, the imperial chancellor can decree that a right to reimbursement may be exercised against subjects of a foreign State or their legal successors.

## XII. GENERAL DEFINITIONS

1. *Employments subject to insurance*

## ARTICLE 159

With reservation of the provisions of articles 551, 928, and 1062, the employment of husband or wife by the other does not establish any insurance obligation.

2. *Earnings*

## ARTICLE 160

PARAGRAPH 1. In the meaning of this law, earnings consist not only of salaries of wages, but also of participation in profits, receipts in kind,

or other receipts which the insured person receives from the employer or a third party in place of salary or wages or in addition to them, even if it is only a matter of custom.

PAR. 2. The value of receipts in kind shall be reckoned according to local prices, which are to be determined by the local insurance office.

### *3. Agriculture*

#### ARTICLE 161

In so far as there are no different provisions, the provisions of this law relating to agricultural establishments, agricultural employers, agricultural undertakers, and agricultural employés, are also applicable to forestry establishments, forestry employers, forestry undertakers, and forestry employés.

### *4. Persons engaged in home-working industries*

#### ARTICLE 162

PARAGRAPH 1. In the meaning of this law, those independent workmen who manufacture or prepare industrial products in their own workrooms on the order and for the account of others are considered as persons engaged in home-working industries.

PAR. 2. They are also considered as such if they themselves procure the raw or auxiliary materials, as well as for the time during which they work temporarily for their own account.

### *5. German seagoing vessels*

#### ARTICLE 163

Every vessel sailing under the German flag, and used exclusively or preferably (*vorzugsweise*) for maritime navigation, is considered as a German seagoing vessel. Merely because natives of protectorates display the flag of the Empire (art. 10 of the protectorate law, *Reichs-Gesetzblatt*, 1900, p. 812), the ship does not become a German seagoing vessel in the meaning of this law.

### *6. Fiscal year*

#### ARTICLE 164

The fiscal year shall be the calendar year.

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Code of January 1, 1913

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**BOOK TWO—SICKNESS INSURANCE****SECTION ONE—SCOPE OF THE INSURANCE****I. COMPULSORY INSURANCE****ARTICLE 165**

PARAGRAPH 1. The following are insured against sickness:

1. Workmen, helpers, journeymen, apprentices, and servants.
2. Establishment officials, foremen, and other employés in similar higher positions, if such employment is for all of them their principal occupation.
3. Clerks and apprentices in commercial establishments, and clerks and apprentices in pharmacies.
4. Members of the stage and of orchestras, without regard to the artistic value of their services.
5. Teachers and tutors.
6. Persons engaged in home-working industries.
7. The crews of German seagoing vessels, provided that they are subject neither to articles 59 to 62 of the Navigation Code (Reichs-Gesetzblatt, 1902, p. 175, and 1904, p. 167), nor to articles 553 to 553b of the Commercial Code; also the crews of vessels engaged in inland navigation.

PAR. 2. The prerequisite of insurance for all persons designated in paragraph 1, under Nos. 1 to 5 and No. 7, with the exception of all classes of apprentices, is that they shall be employed for compensation (art. 160), and that for those designated under Nos. 2 to 5 as well as for masters of vessels, that their regular annual earnings in the form of compensation do not exceed 2,500 marks [\$595].

**ARTICLE 166**

The special provisions of articles 416 to 494 are applicable to the insurance of persons employed in agriculture, as servants, of persons employed temporarily or in itinerant trades, of persons engaged in home industries and their home-working employés, as well as of all classes of apprentices employed without compensation.

**ARTICLE 167**

If when this law comes into force, other groups of employés are subject to insurance in a Federal State according to State laws, then the State government may decree that in case of sickness they are insured according to this law, and may determine the particulars thereof.

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Code of January 1, 1913

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## ARTICLE 168

The Federal Council determines how far temporary services are exempt from the insurance.

## ARTICLE 169

PARAGRAPH 1. Exempt from the insurance are persons employed in the establishments or in the service of the Empire, of a Federal State, of a union of communes, of a commune, or of an insurance carrier, if there has been guaranteed to them from their employers a claim at least equal to the sick benefits in the amount and duration of the regular benefits of sick funds (art. 179), or for the same period, to salary, retirement pension, part pay or similar receipts equal to one and a half times the amount of the pecuniary sick benefits (art. 182).

PAR. 2. The same is applicable to teachers and tutors of public schools and institutions.

## ARTICLE 170

PARAGRAPH 1. On application of the employer, persons employed in the establishments or in the service of other public unions or public corporations shall be exempted by the highest administrative authorities from the insurance obligation if they have been guaranteed one of the claims designated in article 169 from their employer, or if they are only being trained for their profession.

PAR. 2. The same is applicable for officials and employés of the court, domanial, cameralistic, forest, and similar administrations of the State sovereigns, of the ducal regency of Brunswick, and of the administration of the entailed estates of the princes of Hohenzollern.

## ARTICLE 171

On application of the employer, the highest administrative authority may also specify how far persons employed in establishments or in the service of nonpublic corporations, or as teachers and tutors of nonpublic schools or institutions are exempt from the insurance, if there has been guaranteed to them from their employer one of the claims designated in article 169, or if they are being trained solely for their occupation.

## ARTICLE 172

The following are exempt from the insurance:

1. Officials of the Empire, of the federal States, of the unions of communes, of the communes, and of the insurance carriers, and teachers and tutors in public schools or institutions, as long as they are being trained solely for their occupation;

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Code of January 1, 1913

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2. Military persons who carry on during their service, or during their training for a civil employment, one of the occupations designated in article 165, to whom article 169 is to be applied;
3. Persons who are employed in teaching for compensation during their scientific training for their future occupation;
4. Members of ecclesiastical societies, deaconesses, sisters of schools and similar persons, if because of religious or ethical motives they are employed in nursing, education, or other activities of public benefit and do not receive as compensation more than free maintenance.

## ARTICLE 173

Upon his application, a person able to work permanently only to a small extent shall be exempted from the insurance obligation so long as the poor-law union which is liable for relief at the time agrees thereto.

## ARTICLE 174

On application of the employer, the following shall be exempted from the insurance obligation:

1. Apprentices of every kind, so long as they are employed in the establishment of their parents;
2. Persons temporarily employed during unemployment in workmen's colonies or similar benevolent institutions.

## ARTICLE 175

PARAGRAPH 1. The directorate of the fund decides on the application for exemption (arts. 173, 174). The exemption becomes effective from the time of the receipt of the application.

PAR. 2. If the application is refused, the local insurance office on appeal decides finally.

## II. VOLUNTARY INSURANCE

## ARTICLE 176

PARAGRAPH 1. The following persons may join the insurance voluntarily if their total yearly income does not exceed 2,500 marks [\$595]:

1. Employés exempt from the insurance of kind designated in article 165, paragraph 1;
2. Members of the family of the employer, engaged in his establishment, without any specific employment relation and without compensation;
3. Industrial and other undertakers of establishments, who regularly



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Code of January 1, 1913

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employ either no one or at the most two persons subject to insurance.

PAR. 2. The Federal Council specifies how far, under similar assumption, persons exempted from insurance according to article 168 may join the insurance voluntarily.

PAR. 3. The constitution of the sick fund may make the right to join dependent on a certain age limit and on the presentation of a health certificate from a physician. The establishment of an age limit requires the approval of the superior insurance office.

#### ARTICLE 177

If when this law becomes effective there are other groups in a federal State which according to State law have the right to join insurance voluntarily, then this right shall be regulated according to detailed specifications issued by the highest administrative authority.

#### ARTICLE 178

The right to voluntary insurance ceases in every case where the regular total yearly income exceeds 4,000 marks [\$952].

### SECTION TWO—BENEFITS OF THE INSURANCE

#### I. GENERAL PROVISIONS AS TO BENEFITS

#### ARTICLE 179

PARAGRAPH 1. The benefits provided by the insurance consist of the benefits of the sick funds (art. 225) in the form of sickness benefits, maternity benefits, and funeral benefits, as prescribed in this book.

PAR. 2. These benefits are considered as the regular benefits of the sick funds, and also even when the constitution makes use of the provisions of articles 188 and 192.

PAR. 3. The additional benefits specified by the constitution are also objects of the insurance; they may be granted only so far as this book provides.

#### ARTICLE 180

PARAGRAPH 1. The cash benefits of the fund shall be computed according to a basic wage. As such basic wage the constitution shall specify the average daily compensation of those classes of insured persons for whom the fund has been established, but not to exceed 5 marks [\$1.19] per working day.

## Code of January 1, 1913

PAR. 2. The constitution may also determine the average daily compensation according to the various rates of wages of the insured persons by classes up to 6 marks [\$1.43].

PAR. 3. The determination requires the approval of the superior insurance office (decision chamber).

PAR. 4. In place of the average daily compensation the constitution may specify as the basic wage the actual earnings of the individually insured persons up to 6 marks [\$1.43] per working day.

PAR. 5. For persons who voluntarily join the insurance, for whom no basic wage can be ascertained according to the above, the constitution shall specify the same.

## ARTICLE 181

PARAGRAPH 1. In the case of rural sick funds the constitution may specify the local wage rate as the basic wage.

PAR. 2. But for establishment officials, foremen, and other persons in similar higher positions, and also for artisans, the basic wage shall be determined according to article 180. In districts without general local sick funds the same is applicable to the insured persons who according to the nature of their employment should belong to such a fund.

PAR. 3. In districts without a rural sick fund the constitution of the general local sick fund may specify the local wage rate as the basic wage for the insured persons who according to the nature of their employment should belong to a rural sick fund; in this connection paragraph 2, sentence 1, is correspondingly applicable. The superior insurance office can order the insertion of such a provision.

PAR. 4. In the case of insured persons whose basic wage in accordance with the above is specified otherwise than as the regular basic wage of the sick fund, the fund must keep a separate account for their contributions and benefits in so far as the highest administrative authority does not provide otherwise.

## II. SICKNESS BENEFITS

## ARTICLE 182

As sickness benefits (*Krankenhilfe*) shall be granted the following:

1. Sickness care (*Krankenflege*) from the beginning of the sickness on; it includes medical attendance, and supply of medicines, eyeglasses, trusses, and other minor therapeutic appliances;
2. Pecuniary sick benefit (*Krankengeld*) in the amount of half the basic wage for each working day, if the sickness incapacitates the insured person for work; it is granted beginning with the

fourth day of sickness, but if the disability begins later, then from the day of its beginning.

## ARTICLE 183

PARAGRAPH 1. The sick benefits terminate at the latest with the expiration of the twenty-sixth week from the beginning of the sickness, but if the pecuniary benefit has been received beginning with a later date, then from this later date. If there was a period during the receipt of pecuniary benefit in which only medical care was granted, then for not more than 13 weeks this period shall not be included for the duration of the receipt of pecuniary benefit.

PAR. 2. If the pecuniary benefit has to be paid after the twenty-sixth week from the beginning of the sickness, then with its receipt the claim to medical care terminates.

## ARTICLE 184

PARAGRAPH 1. In place of medical care, the sick fund may grant treatment and maintenance in a hospital (hospital treatment—*Krankenhauspflege*). This requires the consent of the patient if he has a household of his own, or if he is a member of the household of his family.

PAR. 2. In the case of a minor over 16 years of age, his consent is sufficient.

PAR. 3. His consent is not required if—

1. The nature of the sickness demands a treatment or care which is not possible in the family of the patient;
2. The sickness is infectious;
3. The patient has repeatedly acted contrary to the sickness regulations (art. 347) or to the orders of the attending physician;
4. His condition or his conduct make continuous observation necessary.

PAR. 4. In the cases mentioned in paragraph 3, Nos. 1, 2, and 4, the sick funds shall, if possible, grant hospital treatment.

PAR. 5. Whenever several suitable hospitals are available which are willing to undertake the hospital treatment on the same conditions, the sick fund shall, under reservation of article 371, leave the choice to the beneficiary.

## ARTICLE 185

PARAGRAPH 1. With the consent of the insured person, the sick fund may grant care and attendance by nurses, nursing sisters, or other attendants, particularly in the cases where the admission of the patient to a hospital seems necessary, but can not be effected, or when there is

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Code of January 1, 1913

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an important reason for leaving the patient in his household or with his family.

PAR. 2. For this purpose the constitution may permit a deduction up to one-fourth of the pecuniary benefit.

#### ARTICLE 186

Whenever hospital care has been granted to an insured person who has supported dependents either wholly or principally from his earnings, there shall in addition be paid to the dependents house money (*Hausgeld*) equal to one-half of the amount of the pecuniary sick benefit. The house money may be paid directly to the dependents.

#### ARTICLE 187

The constitution may—

1. Extend the duration of the sick benefits up to one year;
2. Grant care for convalescents up to the duration of one year after the expiration of the sick benefits;
3. Permit the granting of such appliances to prevent disfigurement or deformity, which after the completion of the medical treatment become necessary in order to restore or maintain the ability to work.

#### ARTICLE 188

If insured persons have already received the pecuniary sick benefit or the benefits substituted therefor for 26 weeks successively or collectively within 12 months, either on the basis of the imperial insurance or from a miners' sick fund or a substitute fund, then the constitution may limit the sick benefits to the regular benefits and to a total duration of 13 weeks in a new case which occurs during the next 12 months. This is only applicable where the sick benefits are demanded on account of the same cause of sickness which has not been removed.

#### ARTICLE 189

PARAGRAPH 1. Where an insured person draws a pecuniary sick benefit at the same time from another insurance, the sick fund has to reduce its benefit to such an extent that the total pecuniary sick benefit of the member does not exceed the average amount of his daily earnings.

PAR. 2. The constitution may refrain from making the reduction either as to all of it or part of it.

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Code of January 1, 1913

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## ARTICLE 190

When they make claim to the pecuniary sick benefit or its equivalent, the constitution may require the members to communicate to the direct-orate the amount of the benefits which they are receiving at the same time from another sickness insurance. The question as to which sickness insurance provides the benefits is not permissible.

## ARTICLE 191

PARAGRAPH 1. The constitution may increase the pecuniary sick benefit up to three-fourths of the basic wage and grant it generally for Sundays and holidays.

PAR. 2. The constitution may grant the pecuniary sick benefit from the first day of the disability in cases of sickness either lasting longer than one week, or resulting in death, or caused by industrial accidents, or with approval of the superior insurance office, also in other cases of sickness.

## ARTICLE 192

The constitution may refuse the pecuniary sick benefit to members either wholly or partly if—

1. They have injured the sick fund by an act punishable by loss of civic rights, for the duration of one year after the act;
2. The sickness has been caused intentionally or by culpable participation in brawls or disorderly conduct, for the duration of such sickness.

## ARTICLE 193

PARAGRAPH 1. With the approval of the superior insurance office, the constitution may establish a maximum amount for minor therapeutic appliances, and also specify that the fund may grant an additional allowance up to this amount for major therapeutic appliances.

PAR. 2. It may grant for the care of patients still other means besides minor therapeutic appliances, particularly special diet for sickness.

PAR. 3. In the case of insured persons who voluntarily remain members of a sick fund (art. 313) the constitution may grant them in the place of the sick care an amount equal to at least one-half of the pecuniary sick benefit, if they are not residing in the district of the sick fund or of the local insurance office.

## ARTICLE 194

The constitution may—

1. Increase the house money up to the amount of the legal pecuniary sick benefit;

## Code of January 1, 1913

2. Grant to insured persons, for whom no house money is to be paid, a pecuniary sick benefit up to one-half of its legal amount in addition to hospital treatment.

## III. MATERNITY BENEFITS

## ARTICLE 195

PARAGRAPH 1. Women lying-in who in the preceding year before their confinement have been insured against sickness at least six months on the basis of the imperial insurance or in a miners' sick fund shall receive a maternity benefit in the amount of the pecuniary sick benefit for eight weeks, six of which must fall in the period after confinement.

PAR. 2. In the case of members of rural sick funds who are not subject to the Industrial Code the constitution must specify that the duration of the receipt of maternity benefits shall be at least four weeks, but not more than eight weeks.

PAR. 3. The pecuniary sick benefit shall not be granted in addition to the maternity benefit. The weeks after the confinement must be consecutive.

## ARTICLE 196

PARAGRAPH 1. With the consent of the women lying-in, the sick fund may—

1. Grant in place of the maternity benefit, medical treatment and maintenance in a lying-in home;
2. Grant treatment and attendance by home nurses and deduct for it not more than one-half of the maternity benefit.

PAR. 2. Article 186 is correspondingly applicable in the case of number 1.

## ARTICLE 197

If a woman lying-in has been insured during the last year in several sick funds, miners' sick funds, or substitute funds, then on demand the amount of the maternity benefit shall be repaid by the other funds to the sick fund liable for the benefits, according to articles 195 and 196, in proportion to the duration of her membership.

## ARTICLE 198

The constitution may grant either to married women subject to insurance or to all females subject to insurance under the requisites mentioned in article 195, paragraph 1, the services of a midwife and the services of an obstetrician if such become necessary at the confinement.

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Code of January 1, 1913

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## ARTICLE 199

In the case of pregnant women who have belonged at least six months to the sick fund, the constitution may—

1. Grant them a pregnancy benefit in the amount of the pecuniary sick benefit for a total duration of not more than six weeks, if they become incapacitated for work on account of their pregnancy;
2. Include in the duration of this benefit the time of the granting of a maternity benefit before confinement;
3. Grant the services of a midwife and medical treatment if such become necessary for ailments incidental to pregnancy.

## ARTICLE 200

The constitution may grant to women lying-in of the class designated in article 195, paragraph 1, a nursing benefit up to the amount of one-half of the pecuniary sick benefit and up to the expiration of the twelfth week after the confinement, so long as they themselves nurse their newborn children.

## IV. FUNERAL BENEFITS

## ARTICLE 201

As a funeral benefit, there shall be paid at the death of an insured person twenty times the amount of the basic wage.

## ARTICLE 202

If, while a member of a sick fund, a sick person dies from the same sickness within one year after the expiration of the sick benefits, the funeral benefit shall be paid: *Provided*, That he has been incapacitated for work up to his death.

## ARTICLE 203

From the funeral benefit are first defrayed the costs of burial, and they shall be paid to the person who has taken care of the burial. In case there is a surplus, then in the following order—the husband or wife, the children, the father, the mother, and the brothers and sisters are successively entitled to receive it, provided that they were living in the same household with the deceased at the time of his death. In the absence of such persons the surplus reverts to the sick fund.

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Code of January 1, 1913

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## ARTICLE 204

The constitution may increase the funeral benefit up to forty times the amount of the basic wage; it may also establish the minimum amount at 50 marks [\$11.90].

## V. BENEFITS TO THE FAMILY

## ARTICLE 205

The constitution may grant—

1. Sickness care to members not subject to insurance, of the family of an insured person.
2. A maternity benefit to the wife not subject to insurance, of an insured person.
3. A funeral benefit on the death of a wife or husband or a child of an insured person. It may be fixed for the wife or husband at not more than two-thirds, for a child at not more than one-half of the funeral benefit of a member, and is to be reduced by the amount of any funeral benefit for which the deceased himself was insured according to law.

## VI. GENERAL PROVISIONS

## ARTICLE 206

For persons subject to the insurance the claim to the regular benefits begins with their membership (arts. 306 to 308).

## ARTICLE 207

The constitution may specify that the claim of persons entitled to insurance who have voluntarily joined the sick fund shall begin only after a waiting term of not more than 6 weeks.

## ARTICLE 208

It may specify that the claim to additional benefits of the fund shall begin only after a waiting term of not more than 6 months after their admittance. Such a provision shall not be applicable to members who, during the last 12 months have already had for at least 6 months a claim to the additional benefits of a sick fund or a miners' sick fund.

## ARTICLE 209

PARAGRAPH 1. By separation from membership this waiting term can be interrupted for the duration of not more than 26 weeks.



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Code of January 1, 1913

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PAR. 2. For members who leave in order to perform their compulsory service in the army or navy the above duration is increased by this period of service.

#### ARTICLE 210

With the exception of funeral benefits, the cash benefits shall be paid at the expiration of each week.

#### ARTICLE 211

In cases where the insurance has already begun the benefits may be increased but not reduced by amendments to the constitution; changes in the basic wage shall have no influence.

#### ARTICLE 212

PARAGRAPH 1. If an insured person who is receiving cash benefits goes over to another fund, the latter takes over the further payment of benefits according to its constitution. The period during which benefits have already been received shall be included in counting the duration of the benefits.

PAR. 2. The insured person shall receive additional benefits only if he has already acquired a claim to additional benefits in his former sick fund.

#### ARTICLE 213

If a sick fund has accepted the contributions for a person for 3 months without interruption and without objection, after application has been made in due form and not intentionally incorrect, and if it develops, after an insurance case occurs, that the person was not subject to insurance, and was not entitled to insurance, then the sick fund must nevertheless grant him the benefits prescribed by the constitution.

#### ARTICLE 214

PARAGRAPH 1. Insured persons who leave the fund on account of lack of employment (*Erwerbslosigkeit*) and who in the preceding 12 months have been insured either not less than 26 weeks or for 6 weeks immediately previous to leaving the fund, shall retain their claim to the regular benefits of the sick fund: *Provided*, That the case of insurance occurs during unemployment and within 3 weeks after leaving the fund. On application the sick fund must certify to the beneficiary his claim for these benefits.

PAR. 2. A funeral benefit shall also be granted even after the expiration of the 3 weeks if the sick benefits have been paid up to the time of death.

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Code of January 1, 1913

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PAR. 3. If the unemployed person remains in a foreign country and if the constitution does not provide otherwise the claim shall cease.

## ARTICLE 215

PARAGRAPH 1. If the Federal Council specifies that persons not subject to insurance according to article 168 may join the insurance voluntarily, it may restrict the regular benefits either to medical care and to hospital treatment without house money, or to their substitutes (art. 185) without pecuniary sick benefit.

PAR. 2. For those persons who join the insurance voluntarily the constitution, with the approval of the superior insurance office, may restrict the sick-fund benefits either to the same extent or restrict them to the pecuniary sick benefit.

PAR. 3. For such insured persons the contributions shall be correspondingly reduced.

## ARTICLE 216

PARAGRAPH 1. Sick benefits shall be suspended—

1. As long as the beneficiary is serving a prison term or is in jail pending trial or has been placed in a workhouse or reformatory; if the insured person has become incapacitated for work through sickness, and if he has supported wholly or partly his dependents by his earnings, then they shall be granted house money (art. 186).
2. For beneficiaries who, after the case of insurance has occurred, without approval of the directorate of the sick fund voluntarily go to a foreign country, for the length of their abode there without this consent; the Federal Council may suspend the stopping of the claim for certain border territories.
3. For foreign beneficiaries so long as they are expelled from the territory of the Empire on account of condemnation in a penal procedure. The same applies to foreign beneficiaries who have been expelled from the territory of a federal State because of condemnation in a penal procedure, so long as they do not stay in another federal State.

PAR. 2. If the beneficiary has dependents in Germany to whom the constitution allows family benefits then these benefits shall be granted.

## ARTICLE 217

PARAGRAPH 1. When, after a case of insurance has occurred, an insured person relinquishes his abode in Germany, without a suspension of sick benefits, the sick fund may settle with him by the payment of a

lump sum. This must correspond to the value of the cash benefits to which he would be entitled in Germany according to the probable duration of the sickness; in such case three-eighths of the basic wage shall be reckoned for medical care.

PAR. 2. In case of a dispute in regard to the settlement, the opinion of the physician agreed upon by the affected parties, otherwise of the official physician, is decisive.

#### ARTICLE 218

ARTICLES 216 and 217 are correspondingly applicable to maternity benefits, as also in the case of article 205, Nos. 1 and 2, for the family members entitled to benefits.

#### ARTICLE 219

PARAGRAPH 1. Sick persons who reside outside of the district of their sick fund receive, on demand of their sick fund, the benefits to which they are entitled from the general local sick fund of their place of residence. If a special local sick fund or a rural sick fund for insured persons of their kind is in operation there, it must grant the benefits.

PAR. 2. The same is applicable to family members entitled to benefits, as also to unemployed persons who have left the insurance (art. 214).

#### ARTICLE 220

The same is applicable to an insured person who falls ill during a temporary sojourn outside of the district of his sick fund, as long as he can not return to his place of residence on account of his condition. An application from his fund is not necessary, but within one week after the case of insurance occurred the sick fund which grants the benefits must notify the sick fund of the insured person, and as far as possible must carry out the latter's wishes as regards the nature of the relief.

#### ARTICLE 221

If an insured person falls ill in a foreign country he receives from the employer the benefits to which he is entitled from his sick fund as long as his condition does not permit of his returning to Germany. The employer must notify the sick fund within one week of the occurrence of the case of insurance, and must carry out as far as possible its wishes as regards the nature of the relief. The sick fund may itself take over the relief.

#### ARTICLE 222

In the cases of articles 219 to 221 the sick fund of the insured person must refund the costs to the other sick fund or to the employer. In such

## Code of January 1, 1913

case three-eighths of the basic wage shall be considered as reimbursement for the cost of the sick care.

## ARTICLE 223

PARAGRAPH 1. Claims to sick benefits lapse within two years after the day of their origin.

PAR. 2. Deductions from the claims of the persons entitled to benefits may only be made for—

Reimbursement claims for amounts which the beneficiary has received in cases of article 1542, or from the imperial accident insurance, but which must be refunded to the sick fund.

Contributions overdue.

Advances paid.

Sick-fund benefits paid in error.

Costs of procedure which the beneficiary has to refund.

Fines imposed by the director of the sick fund.

PAR. 3. Only half the amount of pecuniary benefits may be deducted on account of claims.

## ARTICLE 224

The local insurance office decides, by judgment procedure, in disputes between sick funds in regard to—

1. Claims for refund according to articles 197 and 222.
2. Refund of benefits granted in error.

## SECTION THREE—CARRIERS OF THE INSURANCE

## I. KINDS OF SICK FUNDS

## ARTICLE 225

PARAGRAPH 1. Sick funds, according to this law, are—

The local sick funds (*Ortskrankenkassen*).

The rural sick funds (*Landkrankenkassen*).

The establishment sick funds (*Betriebskrankenkassen*).

The guild sick funds (*Innungskrankenkassen*).

PAR. 2. Members of miners' sick funds established under the provisions of State laws may not join these sick funds.

## II. GENERAL LOCAL SICK FUNDS AND RURAL SICK FUNDS

## ARTICLE 226

PARAGRAPH 1. Local sick funds shall be established for local districts (general local sick funds) (*Allgemeine Ortskrankenkassen*); rural sick funds shall also be created for similar areas.

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Code of January 1, 1913

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PAR. 2. The local and rural sick funds shall, as a rule, be established within the district of a local insurance office.

PAR. 3. The highest administrative authorities may decree and permit exceptions.

#### ARTICLE 227

The State legislation may specify for the territory or for parts of the territory of the federal State that no rural sick funds may be established in addition to the general local sick funds.

#### ARTICLE 228

No rural sick fund shall be established, in addition to the general local sick fund; where the rural sick fund would not have at least 250 compulsory members.

#### ARTICLE 229

The establishment of a rural sick fund, in addition to a general local sick fund, may, with the approval of the superior insurance office, be done away with, where the local insurance office (decision chamber) deems it unnecessary after a hearing of the employers and persons subject to insurance affected.

#### ARTICLE 230

The establishment of a general local sick fund, in addition to a rural sick fund, may, with the approval of the highest administrative authority, be done away with, where the local sick fund would not have at least 250 compulsory members.

#### ARTICLE 231

PARAGRAPH 1. General local sick funds and rural sick funds shall be established by decision of the union of communes.

PAR. 2. Where it is permissible for the district of a local insurance office to create one as well as several general local or several rural sick funds, the unions of communes affected must come to an agreement thereon. If they can not agree, the superior insurance office decides and decrees the establishment of the funds.

#### ARTICLE 232

Where a general local or a rural sick fund is not established in proper time, the superior insurance office decrees its establishment.

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Code of January 1, 1913

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## ARTICLE 233

PARAGRAPH 1. The communes and unions of communes affected have the right to appeal to the highest administrative authority against the decree of the superior insurance office.

PAR. 2. If the final decree is not carried out within the time limit, the superior insurance office establishes the sick fund or authorizes the local insurance office to do so.

## ARTICLE 234

Persons subject to insurance who do not belong to a miners' sick fund or to a special local or establishment or guild sick fund shall be members of the general local or rural sick fund of their class of occupation and of their place of employment.

## ARTICLE 235

PARAGRAPH 1. Members of the rural sick funds are—

Persons employed in agriculture.

Servants.

Persons employed in itinerant trades.

Persons engaged in home-working industries and their home-working employés.

PAR. 2. Persons employed in horticulture, in cemetery establishments, in the care of parks and gardens, are, with reservation of article 236, paragraph 1, and Article 237, paragraph 1, members of rural sick funds only if they are employed in parts of agricultural establishments.

## ARTICLE 236

PARAGRAPH 1. The Federal Council may assign to the rural sick funds still other groups of insured persons who were not legally subject to insurance before this law came into force.

PAR. 2. For its territory or for parts thereof, the highest administrative authority may assign to the general local sick funds individual groups of persons required to be insured in the rural sick funds.

## ARTICLE 237

PARAGRAPH 1. If a district has no general local sick fund, the persons subject to insurance in local sick funds belong to the rural sick fund.

PAR. 2. If a district has no rural sick fund, the persons required to insure in the rural sick fund belong in the general local sick fund.

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Code of January 1, 1913

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## ARTICLE 238

Persons entitled to insurance who desire to insure themselves voluntarily and who do not, according to articles 243, 244, 245, paragraph 4, and article 250, paragraph 2, become members of a special local or establishment or guild sick fund may, according to the class of their employment, join either the general local or the rural sick fund of their place of employment.

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## III. SPECIAL LOCAL SICK FUNDS

## ARTICLE 239

PARAGRAPH 1. Where at the coming in force of this law there is in existence a local sick fund for one or for several branches of industry or kinds of establishments or for insured persons of one sex only, such fund shall be authorized as a special local sick fund, in addition to the general local sick fund, as long as it complies with the requirements of articles 240 to 242.

PAR. 2. It may retain the benefits allowed to be granted up to the present time, even though they are not of the same kind and are higher than those permitted by article 179, provided that such fund covers its expenses without exceeding the maximum legal contributions.

## ARTICLE 240

A special local sick fund shall be authorized only if—

1. It has at least 250 members (art. 241).
2. Its continuance does not endanger the existence or solvency of the general local, and the rural sick fund of the district (art. 242).
3. The benefits prescribed by its constitution are at least equal in value to those of the standard local sick fund, or are made equal within six months (art. 259 to 263).
4. Its solvency is permanently assured.
5. It does not extend beyond the district of the local insurance office.

## ARTICLE 241

The minimum number of members shall be reckoned according to the average for the last three years, or if the sick fund has been in existence a shorter period, according to the average for this period.

## ARTICLE 242

PARAGRAPH 1. The general local sick fund or the rural sick fund are especially considered as endangered if after the authorization of the special

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Code of January 1, 1913

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local sick fund the membership of the former funds would not reach at least 250.

PAR. 2. Until the membership of the general local sick fund or of the rural sick fund has reached this number, the sick funds with the smallest membership shall first be excluded.

#### ARTICLE 243

To the special local sick fund belong those groups of persons subject to insurance for which the sick fund exists according to its constitution; persons belonging to these groups and entitled to insure themselves voluntarily may join this fund. The constitution may not enlarge the scope of the membership.

#### ARTICLE 244

PARAGRAPH 1. If a special local sick fund is in existence for the industry branches and kinds of establishments in which the majority of the persons subject to insurance of an establishment is employed, all persons subject to insurance employed in the establishment shall belong to it, and likewise the persons entitled to insure themselves voluntarily can also join it; otherwise all of them shall belong to the general local sick fund.

PAR. 2. This does not affect membership in a special local sick fund operated for members of one sex only.

### IV. ESTABLISHMENT SICK FUNDS AND GUILD SICK FUNDS

#### ARTICLE 245

PARAGRAPH 1. An employer may create an establishment sick fund for each establishment in which he employs permanently at least 150 persons subject to insurance and for each agricultural establishment or inland navigation establishment in which he employs permanently at least 50 persons subject to insurance. He may also create a common establishment sick fund for several establishments in which he employs permanently at least 150 persons altogether or in agricultural or inland navigation establishments at least 50 persons altogether who are subject to insurance. The persons affected who are subject to the insurance are first to be given a hearing.

PAR. 2. So far as an employer belongs with his establishment to a guild, which has a guild sick fund, he may not create an establishment sick fund for the employes subject to insurance who must belong to the guild sick fund.

PAR. 3. All persons employed in the establishment who are subject to



Code of January 1, 1913

insurance belong to the establishment sick fund. Article 181 is applicable where one of the establishments is an agricultural establishment.

PAR. 4. Persons entitled to insure themselves voluntarily, who are employed in the establishment, may join the sick fund as members.

#### ARTICLE 246

Administrations of the Empire and of the federal States have the same right (art. 245, par. 1) for their service establishments. Article 245, paragraphs 3 and 4, are applicable to the employés in these establishments.

#### ARTICLE 247

In establishments which on account of their nature annually reduce their force regularly or shut down temporarily (seasonal industries), the minimum number (art. 245, par. 1) must be on hand for at least two months.

#### ARTICLE 248

An establishment sick fund may only be created if—

1. It does not endanger the existence or solvency of existing general local sick funds or rural sick funds (art. 242); in this connection a sick fund is not considered as endangered if it still has more than 1,000 members after the creation of the establishment sick fund;
2. The benefits provided by its constitution are at least equal in value to those of the standard sick fund.
3. Its solvency is permanently assured.

#### ARTICLE 249

PARAGRAPH 1. Where a building owner employs temporarily a larger number of workmên in a temporary construction establishment he has to create an establishment sick fund on decree of the superior insurance office.

PAR. 2. With the approval of the superior insurance office the building owner may transfer this obligation to one or more employers, who have wholly or partly undertaken the construction on their own account, provided that sufficient surety is given.

PAR. 3. The provisions concerning a minimum membership as well as article 245, paragraph 2, article 248, are here not applicable; the superior insurance office determines the extent of the benefits.

PAR. 4. If the decree is not carried out within the term specified, the

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Code of January 1, 1913

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superior insurance office itself establishes the fund or charges the local insurance office with its establishment.

#### ARTICLE 250

PARAGRAPH 1. A guild may create a guild sick fund for the establishments of the members who belong to the guild.

PAR. 2. The persons subject to insurance employed in the establishment belong to this sick fund, so far as they are not subject to insurance in rural sick funds according to articles 235 and 236. Persons employed in the establishments and entitled to insure themselves voluntarily can also join it.

PAR. 3. Employés of an establishment, with which an employer has voluntarily joined a compulsory guild or for which an establishment sick fund has been created according to article 249, do not belong to the guild sick fund.

PAR. 4. Where a member of a guild removes his industrial establishment outside of the district of the sick fund, the membership of his employés subject to insurance in the guild sick fund ceases to exist.

#### ARTICLE 251

PARAGRAPH 1. A guild sick fund may only be established if—

1. It does not endanger the existence or solvency of existing general local sick funds and rural sick funds (art. 242); in this connection a sick fund is not considered as endangered if it still has more than 1,000 members after the creation of the guild fund;
2. The benefits provided by its constitution are at least equal in value to those of the standard local sick fund;
3. Its solvency is permanently assured.

PAR. 2. The committee of journeymen, the communal authority of the locality where the guild has its seat, the chamber of handwork, as well as the supervisory authority of the guild, shall be given a hearing previous to the establishment of the fund.

#### ARTICLE 252

PARAGRAPH 1. The application for the approval of an establishment or guild sick fund shall be directed to the local insurance office.

PAR. 2. The local insurance office shall offer to the rural sick funds and general local sick funds affected an opportunity to give their opinion and shall submit the application with an expression of its opinion to the superior insurance office.

## Code of January 1, 1913

## ARTICLE 253

PARAGRAPH 1. Establishment sick funds which have not been decreed according to article 249, as well as guild sick funds, may only be established with the approval of the superior insurance office.

PAR. 2. The superior insurance office (decision chamber) may only refuse the approval for establishment sick funds, with reservation of article 273, paragraph 1, No. 2, if the sick fund does not have the prescribed membership or if it does not meet the requirements of article 248.

## ARTICLE 254

The following are entitled to an appeal to the highest administrative authorities against the decision of the superior insurance office:

The employer or the guild if the approval is refused.

Each rural sick fund or general local sick fund affected, if the approval is granted.

The employer, if the creation of a sick fund has been decreed according to article 249.

## ARTICLE 255

PARAGRAPH 1. An establishment sick fund which existed before the coming into force of this law shall only be authorized if—

1. It has at least one hundred members, or in the case of sick funds for agricultural or inland navigation establishments at least fifty members (arts. 241 and 247):
2. The benefits provided by its constitution are at least equivalent to those of the standard sick fund or are made so within six months:
3. Its solvency is permanently assured.

PAR. 2. Where a common establishment sick fund existed for establishments of several employers it may be authorized under the same conditions.

PAR. 3. These requirements are not applicable to establishment sick funds which are authorized for establishments of the Empire or federal States.

## ARTICLE 256

PARAGRAPH 1. A guild sick fund which existed before the coming into force of this law shall be authorized, if it complies with the requirements of article 255, paragraph 1, Nos. 2 and 3.

PAR. 2. Where a common guild sick fund existed for several guilds it may be authorized under the same conditions.

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Code of January 1, 1913

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## ARTICLE 257

An authorized establishment sick fund, or guild sick fund, may retain other and higher benefits permissible up to the present time than those permitted by article 179, if the fund covers its expenses without exceeding the maximum legal contributions.

## V. CONTROVERSIES

## ARTICLE 258

PARAGRAPH 1. In disputes arising between sick funds, as to which of them the establishments or parts of establishments belong, the local insurance office (decision committee) decides. On appeal the superior insurance office decides finally.

PAR. 2. The same is applicable if the sick funds affected refuse to anyone the right of membership in the sick funds.

PAR. 3. Where the decision assigns establishments or parts of establishments to another sick fund, it shall also determine when the new insurance status comes in force.

PAR. 4. Final decisions concerning the right of membership in sick funds are binding for all authorities and courts.

## VI. BENEFITS OF EQUAL VALUE

## ARTICLE 259

PARAGRAPH 1. The competent local insurance office (decision committee) decides whether sick fund benefits are of equal value with other benefits.

PAR. 2. Estimates of the total value of the benefits shall be made in this connection with due consideration of the special kind of membership of the individual sick funds.

PAR. 3. The Federal Council may determine particulars in this connection.

## ARTICLE 260

Benefits of the standard sick fund which have not been in force a full year shall not be considered; nor shall additional benefits be considered which are only possible at the expense of the reserve, or by an increase of the contributions to more than  $4\frac{1}{2}$  per cent of the basic wage.

## ARTICLE 261

PARAGRAPH 1. The general local sick fund of the district shall be the standard sick fund.

Code of January 1, 1913

PAR. 2. In the case of a sick fund whose district embraces those of several general local sick funds, the general local sick fund of its seat shall be the standard sick fund. A sick fund also grants benefits of equal value if it has special groups of members and maintains for each group benefits whose value is equal to those of the competent general local sick fund.

PAR. 3. In the case of agricultural establishment sick funds the rural sick fund, or where none has been established, the general local sick fund shall be the standard sick fund.

## ARTICLE 262

PARAGRAPH 1. Whether the benefits are of equal value shall be determined every four years if facts are submitted which make it evident that the former determination is no longer correct.

PAR. 2. In the case of a newly established sick fund the local insurance office can take as a basis the benefits last determined of the standard sick fund.

## ARTICLE 263

PARAGRAPH 1. The local insurance office communicates its decision to the sick funds affected, and as far as it concerns the creation of an establishment or of a guild sick fund, also to the rural sick funds and general local funds affected.

PAR. 2. The sick funds have the right of appeal to the superior insurance office. This decides finally. In special cases it may request the opinion of the accounting bureau of the Imperial Insurance Office before making a decision.

## VII. COMBINATION, SEPARATION, DISSOLUTION, AND CLOSING

*1. Local and rural sick funds*

## ARTICLE 264

PARAGRAPH 1. A rural sick fund established for the whole district of the local insurance office shall be combined with the general local sick fund of the district if its membership falls below 250 and does so not merely temporarily.

PAR. 2. This may be done when the local insurance office (decision committee) after a hearing of the employers and persons subject to insurance affected deems its continuance unnecessary.

PAR. 3. A general local sick fund established for the whole district of the local insurance office shall be combined with the rural sick fund of the district if its membership falls below 250 and does so not merely temporarily.

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Code of January 1, 1913

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## ARTICLE 265

PARAGRAPH 1. If for the district of a local insurance office there have been established according to article 231, paragraph 2, several general local sick funds, they may be combined on decision of its committees and with the approval of the communes and unions affected.

PAR. 2. In the same manner several rural sick funds established according to article 231, paragraph 2 may be combined.

## ARTICLE 266

A general local or a rural sick fund shall be closed if it becomes evident that it should not have been established.

## ARTICLE 267

A general local or a rural sick fund, created for parts of the district of a local insurance office, shall be closed if—

1. Its membership falls below 250 and does so not merely temporarily and no combination according to article 265 is affected.
2. Its contributions, although they have amounted to 6 per cent of the basic wage (arts. 389 and 390), inclusive of other revenues, are not sufficient to cover the regular benefits, and in case of a local sick fund if the employer and the insured persons cannot agree on an increase of the contributions, or in case of a rural sick fund if the union of communes does not furnish the requisite funds.

## ARTICLE 268

Where the district of a special local sick fund does not overlap that of the general local sick fund, the committees of both sick funds may decide to make the consolidation.

## ARTICLE 269

PARAGRAPH 1. A special local sick fund may be dissolved on the decision of its committee.

PAR. 2. It shall be closed if—

1. It does not comply with the requirements of articles 240 to 242.
2. It becomes unable to pay its benefits according to article 267, No. 2.
3. It becomes evident that it should not have been authorized.

*2. Establishment and guild sick funds*

## ARTICLE 270

Several establishment sick funds for establishments of the same employer may on decision of their committees be combined into one fund.

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Code of January 1, 1913

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## ARTICLE 271

In the case of a change in the organization of a public administration which has created establishment sick funds for its establishments or services the superior insurance office, or if several superior insurance offices are affected, the highest administrative authorities, on application and after a hearing of the administrative bodies of the sick funds, shall fix the districts of the sick funds in a different manner.

## ARTICLE 272

An establishment sick fund may be dissolved on application of the employer and with the approval of the sick fund committee.

## ARTICLE 273

PARAGRAPH 1. An establishment sick fund shall be closed if—

1. The establishment for which it was created ceases to exist.
2. The employer does not provide for orderly handling of the funds and the accounts; the creation of a new establishment sick fund can be refused to him.
3. It becomes evident that it should not have been established or authorized.

PAR. 2. If in the case of No. 2 above, an establishment sick fund created by decree (art. 249) is concerned, the local insurance office may engage at the expense of the employer a representative for the management of the business of the fund.

## ARTICLE 274

An establishment sick fund not established by decree (art. 249) shall be closed if—

1. Its membership falls below the minimum number and this decrease is not merely temporary (art. 245, par. 1, and art. 255, par. 1, No. 1).
2. The employer with the establishment becomes a member of a voluntary guild or a compulsory member of a compulsory guild which has a guild sick fund.
3. Its benefits are not equivalent to those of the standard sick fund and can not be made so within six months.
4. Its solvency is no longer permanently assured.

## ARTICLE 275

An establishment sick fund created by decree according to article 249 may be closed by the superior insurance office.

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Code of January 1, 1913

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## ARTICLE 276

Guild sick funds shall be combined whenever their guilds are combined.

## ARTICLE 277

PARAGRAPH 1. If a compulsory guild is created, and in consequence a guild is closed, the rights and obligations which it had relative to its guild sick fund shall be transferred to the compulsory guild.

PAR. 2. The fund shall be closed if the compulsory guild includes another district or other industry branches.

## ARTICLE 278

A guild sick fund may be dissolved on decision of the guild meeting after a hearing of the journeymen's committee and with the approval of the sick fund committee.

## ARTICLE 279

A guild sick fund shall be closed if—

1. The guild which established it goes into liquidation or is closed, with reservation of article 277, paragraph 1.
2. Its benefits are not equivalent to those of the standard local sick fund and can not be made so within six months.
3. Its solvency is no longer permanently assured.
4. Orderly handling of cash funds and accounts is not provided.
5. It becomes evident that it should not have been established or authorized.

*3. Procedure*

## ARTICLE 280

The superior insurance office (decision chamber) in whose district the sick funds have their seat decides on the consolidation, dissolution, and closure of sick funds as well as on the question of separating from such funds. Where the seats of the sick funds affected are located in districts of different superior insurance offices, the highest administrative authority determines the competent superior insurance office.

## ARTICLE 281

The application for consolidation, separation, or dissolution is to be directed to that local insurance office which is competent for the sick funds affected. If their seats are located in districts of different local insurance offices, the superior insurance office determines the competent local insurance office.



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Code of January 1, 1913

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## ARTICLE 282

PARAGRAPH 1. Any sick fund affected may make this application; in the case of local or rural sick funds, the competent union of communes can also do so; in the case of establishment sick funds the employer may also do so, and in the case of guild sick funds, the guild likewise.

PAR. 2. If this is not done in due time in cases of article 264, paragraph 1, or of article 286, the local insurance office makes the application on its own initiative.

PAR. 3. If a sick fund must be closed, the local insurance office starts the procedure on its own initiative. In the case of establishment sick funds created by decree it has the right to do so (art. 249).

## ARTICLE 283

PARAGRAPH 1. The local insurance office gives the parties affected an opportunity to express themselves concerning the application. Those sick funds, to which transferred members would have to belong in the future, are considered as affected, as well as the persons designated in article 282, paragraph 1.

PAR. 2. The local insurance office presents the application with the expressions of opinion and the amended constitution to the superior insurance office and expresses thereby its own opinion, so far as it has not itself caused the change.

## ARTICLE 284

PARAGRAPH 1. The superior insurance office specifies in its decision the date on which the amendment comes in force. There must be a minimum interval of four months between the decision and the date specified; in the case of closure of sick funds this term may be shorter in urgent cases.

PAR. 2. The parties affected have the right of appeal against the decision to the highest administrative authority.

## ARTICLE 285

PARAGRAPH 1. In the case of the consolidation of sick funds mutual agreement must be made between the sick funds affected according to articles 286 to 297.

PAR. 2. The highest administrative authority may determine particulars concerning the mutual agreement.

## ARTICLE 286

PARAGRAPH 1. The mutual agreement shall precede the decision of the superior insurance office.

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Code of January 1, 1913

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PAR. 2. To bring about the mutual agreement the representatives of the sick funds affected meet on invitation of the local insurance office under the direction of its representative.

PAR. 3. If an agreement is effected thereby, it shall require the consent of the sick-fund committees affected as well as the approval of the local insurance office. The decision committee may decline to grant the approval for important reasons.

#### ARTICLE 287

If no agreement is effected, or if one of the participating committees does not consent, or the features objectionable to the local insurance office are not removed, the local insurance office (decision committee) takes charge of the arrangements.

#### ARTICLE 288

PARAGRAPH 1. The sick fund which receives the other assumes the rights and obligations of the other sick fund, so far as articles 289 to 296 do not provide otherwise.

PAR. 2. Article 326 is applicable where amendments to the constitution become necessary.

#### ARTICLE 289

The members of the admitted sick fund who are subject to insurance become members of the admitting sick fund. Members who are entitled to insure themselves voluntarily have the right to membership in the admitting sick fund. The members transferred thereby continue their insurance status without interruption.

#### ARTICLE 290

PARAGRAPH 1. The admitting sick fund must take over the officials and employees of the admitted sick fund under the same or equivalent conditions.

PAR. 2. The officials and employees of the fund must accept with the admitting sick fund similar positions corresponding to their ability. They must also content themselves with another employment in the service of the sick fund which is not obviously unsuited to their abilities. They become subject to the service rules of the admitting sick fund; their total income shall not be reduced.

#### ARTICLE 291

PARAGRAPH 1. The directorate of the sick fund which is to be admitted shall communicate without delay the decision of the superior insurance

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Code of January 1, 1913

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office (art. 284, part. 1) to the physicians and dentists to which the sick fund stands in contract relations. Within 14 days thereafter the physician or dentist may declare to the admitting sick fund his readiness to render service for it under the conditions which he had already agreed upon with the admitted sick fund, or under the terms which the admitting sick fund makes with its own physicians and dentists. If the admitting sick fund does not accept the offer without delay it must compensate the physician or dentist. If the physician or dentist has not declared his willingness within 14 days, the contract relation may be revoked by either party, beginning from this point of time, by observing three months' period of notice, but not sooner than the date of admission. Contractual rights to give notice at an earlier point of time are hereby not affected.

PAR. 2. This shall be correspondingly applicable for contract relations of the sick funds with owners and administrators of pharmacies, all classes of medical institutions, and with the persons enumerated in article 122, as also with dealers.

#### ARTICLE 292

The representatives of the sick funds affected and the local insurance office may determine that an admitted sick fund shall for a maximum period of four years be represented in the directorate of the admitting sick fund by a specified number of insured persons and employers.

#### ARTICLE 293

The fund which is to be admitted shall ascertain by a balance sheet (arts. 39, 40, and 261 of the Commercial Code) its net assets, and for each transferred member assign therefrom to the admitting sick fund an amount equivalent to the amount of net assets falling to each member of the admitting sick fund.

#### ARTICLE 294

PARAGRAPH 1. If there are still any free assets they are to be turned over to the admitting sick fund.

PAR. 2. If this amount is large enough the committee of the sick fund which is to be admitted may form thereof a special fund for the members which are to be transferred, from which they shall receive an increase in the funeral benefit. The increase must not exceed the amount of the funeral benefit according to articles 204 and 205, No. 3.

PAR. 3. The directorate of the admitting sick fund shall administer this special fund in accordance with the manner specified. If the last insured person transferred has left, the balance shall go in the reserve fund of the sick fund.

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Code of January 1, 1913

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PAR. 4. If the admitting sick fund grants considerably higher benefits, the sick fund which is to be admitted has to turn over to it in advance an amount which according to a proper estimate will equalize the difference.

#### ARTICLE 295

If it can be shown that the employer or the guild have made voluntary gifts to an establishment fund or guild sick fund which is to be admitted, they may transfer a corresponding part of the free assets to the benefit of a special sick fund or a special endowment (art. 294, par. 3) for the members who are transferred.

#### ARTICLE 296

PARAGRAPH 1. Where a sick fund which is to be admitted does not possess the full per capita amounts (art. 293) or any net assets, it shall turn over only the assets on hand.

PAR. 2. If the balance sheet of an establishment fund or guild sick fund which is to be admitted shows a deficit the employer or the guild liable for these amounts must cover the deficit.

PAR. 3. If such a deficit becomes evident in a local or rural sick fund which is to be admitted, then the admitting sick fund may for one year increase the contributions for the insured persons admitted, by a special assessment up to the maximum legal amount (art. 389).

#### ARTICLE 297

PARAGRAPH 1. The parties affected have the right of appeal to the superior insurance office (decision chamber) against the mutual arrangements approved or caused by the local insurance office. The decision of the superior insurance office is final.

PAR. 2. So far as the appealed decision relates to financial affairs, the superior insurance office may ask the accounting bureau of the Imperial Insurance Office to express its opinion.

#### ARTICLE 298

PARAGRAPH 1. Mutual arrangements between the sick funds affected also take place if—

1. The districts of the sick funds are changed by a different delimitation of the administration districts;
2. In a district where up to the present time no general local or no rural sick fund existed, a sick fund of this kind is established;
3. A new sick fund of the same kind is separated from a general local or a rural sick fund;

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Code of January 1, 1913

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4. Persons belonging to the same industry branch or the same kind of establishment after a majority decision make application to be separated from an authorized special local sick fund;
5. One of several establishments of an employer for which there exists a common establishment sick fund changes ownership and one of the employers affected applies for a separation;
6. An employer with his establishments separates from an authorized common establishment sick fund;
7. A part of the members separate from a guild sick fund because the membership class of the guild is to be delimited in a different manner or a compulsory guild is to be established;
8. A guild makes application to separate from an authorized common guild sick fund.

PAR. 2. For the mutual agreement articles 286 to 297 are correspondingly applicable.

PAR. 3. In the case of unimportant changes and of article 271, a mutual agreement may with the consent of the sick funds affected be done away with; article 288, paragraph 2, and article 289 are then also correspondingly applicable.

#### ARTICLE 299

In the case of dissolution and closing of sick funds, their relations to others shall be regulated according to articles 300 to 305.

#### ARTICLE 300

PARAGRAPH 1. In so far as members of a sick fund which has been dissolved or closed are present, the local insurance office after a hearing of their sick fund directorate, assigns them to the appropriate sick funds. The members entitled to insurance have the right of membership in the corresponding sick fund. The members transferred thereby continue their insurance status without interruption. Article 288, paragraph 2, is in such case correspondingly applicable.

PAR. 2. The superior insurance office (decision chamber) decides finally on appeals relating to the assignment.

#### ARTICLE 301

PARAGRAPH 1. The directorate of the dissolved or closed sick fund shall wind up the affairs of the sick fund. Until the affairs are wound up the sick fund is considered as in continuance as far as the purpose of the liquidation so requires.

PAR. 2. The directorate gives public notice of the dissolution or closing. The payment of creditors who fail to present their claims within three

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Code of January 1, 1913

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months from the notice may be refused; the notice shall call attention to this fact. Known creditors shall under the same reference be specially requested to present their claims. These provisions are not applicable to claims connected with the insurance.

#### ARTICLE 302

PARAGRAPH 1. The directorate of the sick fund which is being dissolved or closed shall without delay notify the employees, physicians, and dentists with whom the sick fund has contract relations of the decision of the superior insurance office (art. 284, par. 1). The contract relation terminates within three months after the notification, but at the earliest with the date of dissolution or closing. The notice shall call attention to this fact. Contractual rights to give notice at an earlier point of time are hereby not affected.

PAR. 2. This is correspondingly applicable to contract relations of the sick funds with pharmacy owners and pharmacy administrators, medical institutions of all classes, and with persons enumerated in article 122.

#### ARTICLE 303

PARAGRAPH 1. If there are still any free assets after liquidation of the affairs, then the local insurance office, with consideration of the transfer of members, shall assign these assets to the sick funds.

PAR. 2. Article 295 is hereby correspondingly applicable in the case of establishment and guild sick funds.

PAR. 3. The superior insurance office (decision chamber) decides finally on appeals concerning the assignment.

#### ARTICLE 304

Article 296, paragraph 2, is correspondingly applicable in the case of establishment funds and guild sick funds if the assets are not sufficient to pay off the creditors.

#### ARTICLE 305

PARAGRAPH 1. Where the assets of a dissolved or closed local or rural sick fund are not sufficient to pay the claims of the officials, the union of communes shall make up the deficit; the official must accept a position offered him by the union. This provision is correspondingly applicable to the guild in the case of a guild sick fund.

PAR. 2. Article 290 is here correspondingly applicable.

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Code of January 1, 1913

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## SECTION FOUR.—CONSTITUTION

## I. MEMBERSHIP

*1. Beginning and termination*

## ARTICLE 306

The membership of persons subject to insurance begins with the date of their entrance in the employment subject to insurance.

## ARTICLE 307

The membership in the case of a newly created establishment sick fund begins for all persons subject to insurance employed in the establishment, with the date on which the sick fund comes into existence.

## ARTICLE 308

The above is applicable, with reservation of article 250, paragraph 3, to employees subject to insurance in establishments, with which guild members belong to a guild, in the case of the creation of a guild sick fund or the later admission of the employer to the guild.

## ARTICLE 309

PARAGRAPH 1. To which sick fund an insured person shall belong, who has at the same time several employment relations subject to insurance, shall be decided by his principal employment.

PAR. 2. In case of doubt, the employment relation into which he has first entered shall be decisive.

PAR. 3. The Federal Council may specify the particulars in such a case.

## ARTICLE 310

PARAGRAPH 1. The membership of persons entitled to insurance shall begin with the date of their admission to the sick fund. The admission is effected by written or oral application to the directorate or to the office of registration (art. 319).

PAR. 2. A sickness already existing at the time of admission does not entitle to benefits for this sickness. If the constitution makes the right of admission dependent on the presentation of a medical health certificate (art. 176, par. 3), the same must accompany the application.

PAR. 3. Persons entitled to insure themselves voluntarily, who apply for admission, may be subjected to a medical examination by the sick fund. It may refuse the applications of sick persons and such persons

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Code of January 1, 1913

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for whom the necessary medical health certificates according to paragraph 2 do not suffice, this refusal to take effect beginning with the application.

#### ARTICLE 311

Persons unable to work retain their membership as long as the sick fund has to grant them benefits.

#### ARTICLE 312

The membership ceases as soon as the insured person becomes a member of another sick fund or of a miners' sick fund.

#### ARTICLE 313

PARAGRAPH 1. If a member who was insured on the basis of the imperial insurance or in a miners' sick fund at least 26 weeks in the preceding 12 months, or for at least 6 weeks immediately previous thereto, leaves the employment subject to insurance, he may retain his membership in his class or grade of wages as long as he resides regularly in Germany and does not cease to be a member according to article 312. He may have himself transferred to a lower class or grade of wages.

PAR. 2. Whoever desires to retain his membership must notify the sick fund within three weeks after leaving, or in the case of article 311 after the termination of the benefits. If a member becomes ill in the second or third of these weeks, then with reservation of article 214 he has a claim to benefits only if he has given notice during the first week. The full payment, within the same time limit, of the contributions provided in the constitution is equivalent to the notification. With the approval of the superior insurance office the constitution may specify longer time limits.

#### ARTICLE 314

PARAGRAPH 1. The membership of persons entitled to insure themselves voluntarily ceases if they have failed twice in succession to pay the contributions on the date when due, and if at least four weeks have elapsed since the first of these dates. The constitution may extend this time limit to the next following day of payment.

PAR. 2. If the directorate learns on good authority that the regular total annual income of a member entitled to insure himself voluntarily, exceeds 4,000 marks (\$952), it shall at once inform this member that his membership has ceased. The membership ceases with the delivery of the notification.



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Code of January 1, 1913

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## ARTICLE 315

If, after application in due form, a sick fund has accepted the contributions from a person subject to insurance, for three months in succession and without objection, it must recognize him as a member as long as there is no change in his employment status, at least until the date on which the directorate of the sick fund, in writing, refers him or his employer to another sick fund.

## ARTICLE 316

In case the other sick fund contests his right to belong to it, the old sick fund must, with reservation of a later refund, continue to accept provisionally the contributions and to grant the benefits up to the time of the decision.

*2. Registration*

## ARTICLE 317

PARAGRAPH 1. Within three days from the beginning and termination of the employment the employers must register each person employed by them who is subject to membership in a local, rural, or guild sick fund at the place determined by the constitution or according to article 319. Changes in the employment status having influence on the insurance obligation shall also be registered within three days.

PAR. 2. The registration may be omitted if the work is interrupted for a shorter period than one week and if the payment of contributions is kept up. The constitution may extend the time limit for registration beyond the third day and up to the last working day of the calendar week.

PAR. 3. The sick fund may make an agreement with the administrations of Imperial or State establishments as to other methods of registration.

PAR. 4. The highest administrative authority may issue regulations regarding the form and contents of the registration notice.

## ARTICLE 318

PARAGRAPH 1. The application must also contain the statements required by the constitution for the computation of contributions.

PAR. 2. Changes in these relations are to be reported within the time limit of registration.

PAR. 3. In the case of a change in wages the grade of wages does not change until the next payment of the contribution, unless the constitution provides otherwise.

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Code of January 1, 1913

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## ARTICLE 319

PARAGRAPH 1. The local insurance office may establish in its district joint registration offices for all or for several local, rural, and guild sick funds, or with the approval of the communal supervisory authority turn over the business of these funds to the local authorities.

PAR. 2. The costs shall be divided among the different sick funds in proportion to their annual revenues from contributions, unless the superior insurance office specifies a different basis.

## II. CONSTITUTION

## ARTICLE 320

PARAGRAPH 1. Before coming into existence, each sick fund shall draw up a constitution.

PAR. 2. It shall be drawn up in the case of—

Local and rural sick funds, by the union of communes after a hearing of the employers and insured persons interested;

Establishment sick funds, by the employer or his representative after a hearing of the employees;

Guild sick funds, by the general meeting of the guild with the participation of the journeymen's committee according to article 95 of the Industrial Code (*Gewerbeordnung*).

PAR. 3. If a fund is not established within the time limit finally decreed (art. 233, par. 2, and art. 249, par. 4), the local insurance office shall draw up a constitution for it.

## ARTICLE 321

The constitution must indicate the district of the sick fund and the class of its members and specify the following:

1. Name and seat of the sick fund;
2. Nature and extent of benefits;
3. Amount of contributions and time of payment;
4. Composition, rights, and duties of the directorate;
5. Composition and convocation of the committee and the method of forming its decisions, as also its representation in dealings with third parties in case of article 346, paragraph 1;
6. Drawing up of the preliminary budget;
7. Drawing up and acceptance of the annual accounts;
8. Amount of allowances according to article 21, paragraphs 2 and 3;
9. Method of issuing public notices;
10. Amendment of the constitution.

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Code of January 1, 1913

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## ARTICLE 322

In the case of the local, rural, and guild sick funds the constitution must indicate the places for registration.

## ARTICLE 323

The constitution may not specify anything which contravenes the legal regulations or does not come within the purpose of the fund.

## ARTICLE 324

PARAGRAPH 1. The constitution, as well as the amendments thereto, requires the approval of the superior insurance office. When it gives its approval to the constitution, the superior insurance office shall at the same time specify when the sick fund comes into existence.

PAR. 2. The approval may be refused only by the decision chamber, and then only in case the constitution does not comply with the legal provisions.

PAR. 3. Where the law demands the approval for individual regulations of the constitution by the superior insurance office, the approval may be refused by the decision chamber only. The decision is final.

PAR. 4. The reasons for the refusal shall be stated.

## ARTICLE 325

Each member shall receive free a printed copy of the constitution and the amendments thereto; also, on application, each employer who employs members of the sick fund shall receive a copy.

## ARTICLE 326

PARAGRAPH 1. If it subsequently develops that a constitution according to article 324, paragraph 2, should not have been approved, the superior insurance office (decision chamber) shall decree the necessary amendment.

PAR. 2. If within one month the committee does not decide upon the amendment ordered by a final decree, the superior insurance office (decision chamber) shall issue the same with legal force.

PAR. 3. The same applies to amendments of the constitution ordered by a final decree, which are required by the provisions of this law.

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Code of January 1, 1913

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## III. ADMINISTRATIVE BODIES OF THE FUNDS

*1. Organization of local and rural sick funds*

## ARTICLE 327

The directorate and committee transact the affairs of the funds. The members of the committee may not belong to the directorate; if such are elected in the directorate, they must leave the committee.

## ARTICLE 328

PARAGRAPH 1. The members of the directorate elect from their own number the president of the directorate.

PAR. 2. Whoever receives the majority of votes, either from the group of employers or from that of the insured persons, is elected.

## ARTICLE 329

PARAGRAPH 1. When this majority can not be obtained the election is adjourned to another day.

PAR. 2. If also in the second session no election is effected, the directorate notifies the local insurance office. The latter appoints a representative who administers the rights and duties of the president at the expense of the sick fund until a valid election is effected. On appeal the superior insurance office decides finally. An employer may only then be appointed as representative if the majority of the group of employés does not object and an employé only if the majority of the group of employers does not object.

PAR. 3. A person employing only servants or nonpermanent workmen is not considered an employer in the meaning of paragraph 2.

## ARTICLE 330

The members of the directorate of the local sick fund elect from their number in a joint election one or more substitutes for the president.

## ARTICLE 331

PARAGRAPH 1. The representatives of the union of communes elect the president and the other members of the directorate of the rural sick fund, among which must be one or more substitutes for the president. One-third of these members must belong to the employers affected (art. 332, par. 2), and two-thirds to persons insured in the sick fund.

PAR. 2. The highest administrative authority may specify that the president and the other members of the directorate shall be elected in the

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Code of January 1, 1913

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same manner as the representatives in the committee according to article 336, paragraph 2.

#### ARTICLE 332

PARAGRAPH 1. One-third of the committee consists of representatives of the employers affected and two-thirds of representatives of the insured persons. It has a maximum number of 90 representatives.

PAR. 2. An employer is considered as affected if he has to pay contributions to the sick fund for his employés subject to insurance, and if he is not to be counted among the insured persons according to article 14, paragraph 2.

#### ARTICLE 333

PARAGRAPH 1. In the case of a local sick fund the employers affected who are of age and the insured persons who are of age elect their representatives from their own number, and this must be done in separate elections, under the direction of the directorate.

PAR. 2. The first election after the establishment of the sick fund takes place under the direction of a representative of the local insurance office; later elections only where no directorate exists.

PAR. 3. The voting power of the individual employers shall be proportioned according to the number of their employés subject to insurance; the constitution may graduate it and provide a maximum number of votes. Provisions relating to graduation and maximum voting power require the approval of the superior insurance office.

#### ARTICLE 334

PARAGRAPH 1. The interval between the notice of an election (art. 333) and the election itself must amount to at least one month. The constitution may fix a longer minimum interval.

PAR. 2. The constitution may specify that the election shall take place according to districts or occupation groups.

#### ARTICLE 335

The representatives of the employers and of the insured persons in the committee elect from their group in separate elections, the members of the directorate as follows: The employers elect one-third, the insured persons two-thirds.

#### ARTICLE 336

PARAGRAPH 1. In the case of a rural sick fund the representatives of the union of communes elect representatives from the number of the employers affected and from the number of the insured persons in the fund.

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Code of January 1, 1913

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PAR. 2. In such districts of local insurance offices in which only urban and rural communes exist, but not independent manor districts, marks, or march districts (*selbständige Gutsbezirke, Gemarkungen oder ausmärkische Bezirke*), the State government may transfer the right to vote to the representatives of the individual communes and can specify the particulars thereto.

PAR. 3. It may be decreed for the territory or parts of territories of the federal State by a State law that the directorate and committee shall be elected in the same manner as in the case of the local sick fund.

#### ARTICLE 337

Employers who are in arrears with the payment of contributions may be excluded by the constitution from eligibility and from the right to vote.

#### *2. Composition of establishment and guild sick funds*

#### ARTICLE 338

PARAGRAPH 1. Article 327 is correspondingly applicable to establishment sick funds.

PAR. 2. The directorate and the committee consist of the employer or his representative and of the representatives of the insured persons; the committee has a maximum number of 50 representatives of the insured persons.

PAR. 3. The employer or his representative is the president; he has one-half of the number of votes granted by the constitution to the insured persons.

#### ARTICLE 339

The insured persons who are of age elect from their own number under the direction of the directorate their representatives in the committee of the establishment sick fund. Article 333, paragraph 2, and article 334 paragraph 1, are here applicable. These representatives elect from the insured persons their representatives in the directorate.

#### ARTICLE 340

A person who voluntarily continues his membership in an establishment sick fund is neither eligible nor has he the right to vote.

#### ARTICLE 341

PARAGRAPH 1. Articles 327, 332, 333, 334, paragraph 1, 335, and 337 are also applicable to guild sick funds. The guild appoints the president and his substitutes from the members of the directorate.

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Code of January 1, 1913

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PAR. 2. If according to the constitution (art. 381, par. 2) the employers are required to pay one-half and the insured persons the other half of the contributions, then each of them is entitled to half of the representatives in the committee, and the representatives elected by the employers elect one-half of the members of the directorate, and those elected by the insured persons the other half.

### *3. Duties*

#### ARTICLE 342

The directorate administers the fund so far as the law does not provide otherwise.

#### ARTICLE 343

PARAGRAPH 1. The directorate is required, on demand, to give to the industrial supervisory officials information relating to the number and class of cases of sickness.

PAR. 2. The highest administrative authorities may specify the particulars herewith.

#### ARTICLE 344

The directorate must permit representatives of the carriers of the accident and of the invalidity and survivors' insurance to inspect in the office of the sick fund during business hours the books and lists for the purpose of ascertaining the number, time of employment, and amount of wages of their insured persons.

#### ARTICLE 345

PARAGRAPH 1. The committee decides on all matters which the law, constitution, or service regulations do not assign to the directorate.

PAR. 2. To the committee is reserved—

- 1: The determination of the preliminary budget.
2. The acceptance of the annual balance sheet.
3. The representation of the sick fund against the members of the directorate;
4. The decision on agreements and contracts with other sick funds;
5. The decision on the establishment of places of registration and of payment;
6. The amendment of the constitution;
7. The dissolution of the sick fund or the voluntary affiliation of it with other sick funds.

PAR. 3. Decisions according to numbers 6 and 7 need a majority both

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Code of January 1, 1913

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of the employers and the insured persons. In the case of amendments to the constitution a joint vote is sufficient, if such are decreed according to article 326, or if they relate to benefits or contributions, and do not run counter to article 388 or 389.

#### ARTICLE 346

PARAGRAPH 1. In the case of the acquisition, sale, or mortgaging of real estate, the sick fund shall be represented by the directorate and the committee.

PAR. 2. The approval of the committee is necessary for—

1. The service regulations for the employes which have been formulated or changed by the directorate (art. 355);
2. Decisions of the directorate relating to the establishment of hospitals and convalescent homes.

#### ARTICLE 347

PARAGRAPH 1. The committee regulates through sickness regulations the registration and control of sick persons as well as their conduct.

PAR. 2. These regulations require the approval of the local insurance office. If the approval is refused, the superior insurance office (decision chamber) decides finally on appeal.

PAR. 3. If notwithstanding a requisition of the local insurance office a sick fund does not submit within the time limit any sickness regulations, the superior insurance office (decision chamber) shall draw up such regulations and they shall be of legal effect. The same is applicable to amendments or additions which have been ordered by decree.

PAR. 4. With the approval of the fund and under agreement regarding the costs, the local insurance office may assist the sick fund in the control of sick persons. The decision committee decides concerning this matter. If the fund declines such aid, the superior insurance office decides finally on appeal.

#### ARTICLE 348

The committee specifies the method of remittance of contributions and of payment of benefits for members who do not reside in the district of the sick fund, and how the control of sick persons is to be regulated where such members are concerned.

### IV. EMPLOYÉS AND OFFICIALS OF THE FUND

#### ARTICLE 349

PARAGRAPH 1. The positions of officials and those employes to whom the service regulations (art. 351) are applicable, and which are paid from



the means of the sick funds, shall be filled in the case of sick funds by concurring decisions of both groups in the directorate.

PAR. 2. If the groups can not agree, the decision is postponed to a later day. Should then no agreement be effected, the appointment may be decided on if more than two-thirds of those present vote for it; such a decision requires the confirmation of the local insurance office. It may only be refused on the basis of such facts which permit the conclusion that the person proposed lacks the necessary responsibility, especially for an impartial discharge of his official duties, or the ability requisite for the position.

PAR. 3. In case of a refusal of the confirmation, the superior insurance office (decision chamber) decides finally on appeal of the directorate.

#### ARTICLE 350

When no decision relating to an appointment is effected, or the confirmation is finally refused, the local insurance office appoints temporarily at the expense of the sick fund the persons necessary for the discharge of the duties of the position. If the appointees have administered the affairs during one year, the local insurance office may, with the approval of the superior insurance office, appoint them permanently to the position, unless a valid decision relating to an appointment has meanwhile been effected.

#### ARTICLE 351

PARAGRAPH 1. Service regulations must be formulated for the salaried employes of the sick funds who, according to State law, are not State or communal officials, or whose rights or duties are based on article 359.

PAR. 2. To employes who are employed only on probation, for temporary service, as a preparatory service, or who administer the office only incidentally without compensation, the service regulations are only applicable in so far as they expressly so provide.

#### ARTICLE 352

The service regulations regulate the legal and the general service relations of the employes, especially the proof of their technical qualifications, their number, the class of appointment, the giving of notice or the discharge, and the determination of penalties. Technical qualifications must also be proved in some other manner than by the completion of a prescribed educational course.

#### ARTICLE 353

PARAGRAPH 1. The service regulations must contain a scale of salaries. They shall regulate the following:

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Code of January 1, 1913

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1. How long in case of involuntary disability the payment of the salary shall continue;
2. For what periods seniority increases of salary shall be granted;
3. Under what conditions a pension and survivors' relief shall be granted.

PAR. 2. They shall regulate also the requirements for promotion.

#### ARTICLE 354

PARAGRAPH 1. Persons subject to the service regulations are appointed by written contract.

PAR. 2. The giving of notice of dismissal or the discharge of such employés shall, with reservation of paragraph 6, only be done on the concurring decision of the employers and insured persons in the directorate, or, in case such a decision is not effected, on decision of the majority of the directorate, with the approval of the presiding officer of the local insurance office; after 10 years of employment it may only take place for important reasons.

PAR. 3. Agreements relating to the right of the sick fund to give notice of dismissal must not place the employé in a worse position than he would be in the absence of an agreement according to the civil law.

PAR. 4. The giving of notice of dismissal or the discharge must not be forbidden in cases in which there are important reasons.

PAR. 5. Fines shall only be prescribed for not more than one month's salary.

PAR. 6. Employés who abuse their official position or their official affairs for the purpose of religious or political activity shall be reprimanded by the president of the directorate, and in the case of repetition, after they have been given an opportunity for a hearing, shall be discharged immediately; the discharge requires the approval of the president of the local insurance office. Religious or political activity outside of official affairs and the exercise of the right of association shall not be prevented in so far as they do not conflict with the laws, and in themselves shall not be considered as reasons for giving notice of dismissal or for discharge.

#### ARTICLE 355

PARAGRAPH 1. Before formulating the service regulations the directorate shall grant a hearing to the employés who are of age.

PAR. 2. In the directorate and also in the committee employers and insured persons decide separately on the service regulations.

PAR. 3. The service regulations require the approval of the superior insurance office. The directorate must designate to the superior insurance

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Code of January 1, 1913

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office those provisions of the service regulations on which the two groups in the directorate or committee have not agreed and must give a statement of the relative vote. The superior insurance office decides on these provisions; in other respects it only may refuse the approval of the service regulations, if there is an important reason, especially if the number or the salaries of the employ  s are in striking disproportion to their duties.

PAR. 4. If the approval is refused, the highest administrative authority decides on appeal.

PAR. 5. The same is applicable to changes in the service regulations.

#### ARTICLE 356

If, notwithstanding a requisition, a sick fund does not submit within the specified time limit any service regulations, the superior insurance office shall draw up the same and they shall have legal effect. The same is applicable to amendments or additions ordered by a decree.

#### ARTICLE 357

PARAGRAPH 1. Decisions of the directorate or of the committee running counter to the service regulations shall be challenged by the president of the directorate through an appeal to the supervisory authority; the appeal effects a stay.

PAR. 2. If the directorate or its president does not make use of the right of giving notice of dismissal or of discharge against an employ  , notwithstanding that there is a serious reason therefor, the local insurance office may require them to do so. On appeal of the directorate, the superior insurance office (decision chamber) decides finally on the decree.

PAR. 3. A provision of the employment contract running counter to the service regulations is invalid.

#### ARTICLE 358

PARAGRAPH 1. The local insurance office (decision committee) decides in disputes relating to the service matters of employ  s subject to the service regulations. On appeal the superior insurance office decides finally. The imperial decrees (art. 35, par. 2) regulate the particulars concerning the procedure of discharge of an employ   on account of contravention of the service regulations or in the case of article 354, paragraph 6, in accordance with the provisions of the imperial law for officials concerning the Writ of accusation, admission of counsel for the defendant, hearing of the defendant, oral procedure, and passing upon the evidence.

PAR. 2. The following special provisions are applicable to pecuniary claims.

PAR. 3. The decision of the superior insurance office must precede the

## Code of January 1, 1913

suit. Suit may only be brought within one month after the delivery of the decision of the superior insurance office; the time limit is a peremptory time limit in the meaning of article 223, paragraph 3, of the Code of Civil Procedure.

PAR. 4. Appeal to the regular courts is excluded where the determination of fines is concerned. The regular courts must accept the decisions of the insurance authorities on the question whether the period of dismissal having been observed, a notice of dismissal may be given for an important reason (art. 354, par. 2).

PAR. 5. Execution of the valid decisions of the insurance authorities takes place according to book eight of the Code of Civil Procedure.

## ARTICLE 359

PARAGRAPH 1. The directorate of a local, a rural, or a guild sick fund may, with the approval of the superior insurance office, employ officials for life or according to the State laws without recall or with the right to pension.

PAR. 2. In the case of local, rural, or guild sick funds with over 10,000 insured persons the superior insurance office may, after a hearing of the sick fund, decree that at least the business directors shall be employed in this manner.

PAR. 3. The directorate may appeal against such a decree to the highest administrative authority.

PAR. 4. The State government may assign to officials appointed in this manner the rights and duties of State or communal officials.

PAR. 5. Article 357, paragraph 2, is applicable to the officials of the funds.

PAR. 6. No provision shall be made granting preference in the filling of vacancies to persons in possession of a certificate entitling the holder to a civil-service position (soldiers entitled to civil employment).

## ARTICLE 360

Where, according to the State laws, the officials of communes and other public corporations, who are not appointed for life or without recall, are obliged to join a pension fund under State control or a similar institution, the State government may extend the provisions in force for this purpose to the corporations and their employés to the local, rural, and guild sick funds and their employés.

## ARTICLE 361

Article 23, paragraph 1, is correspondingly applicable to managing officials or employés.

## ARTICLE 362

PARAGRAPH 1. In the case of establishment sick funds the employer appoints at his expense and on his own responsibility the persons necessary to conduct the affairs. Article 24 is correspondingly applicable to these persons.

PAR. 2. Employés of establishment sick funds, who abuse their official position or their official affairs for the purpose of religious or political activity, shall be reprimanded by the president of the directorate, and in case of a repetition shall be immediately discharged, after having been given an opportunity for a hearing; article 357, paragraph 2, is then correspondingly applicable.

## V. ADMINISTRATION OF RESOURCES

## ARTICLE 363

PARAGRAPH 1. The resources of the sick fund shall only be used for the benefits provided by the constitution, for the accumulation of the reserve, for the administration expenses, and for the general purposes of the prevention of sickness.

PAR. 2. On the authorization of the highest administrative authorities it is permissible to use the resources of the sick fund for the attending of meetings which shall serve the legal purposes of sickness insurance.

## ARTICLE 364

PARAGRAPH 1. The sick fund shall accumulate a reserve equal to the minimum amount of one year's expenses computed according to the average of the last three years and shall maintain it at this amount. For this purpose it shall use the parts of contributions paid by employers for members of substitute sick funds (art. 517, par. 2), and at least one-twentieth of the annual amount of the other contributions of the fund.

PAR. 2. In the case of establishment sick funds created by decree, the constitution, with the approval of the superior insurance office, may make other provisions.

## ARTICLE 365

Securities of the sick fund which are not merely an investment of operating resources which are temporarily available, shall be kept in the custody of the union of communes, unless the local insurance office provides otherwise.

## ARTICLE 366

The Federal Council shall specify the method and form of accounting.

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Code of January 1, 1913

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## ARTICLE 367

PARAGRAPH 1. The sick fund must submit to the local insurance office a balance sheet and also statements relating to—

1. Members.
2. Cases of sickness, cases calling for other benefits, and deaths.
3. Contributions received.
4. Benefits granted.
5. Kind and amount of reimbursement for medical treatment.
6. Number of physicians, specialists, dental surgeons, dental assistants, owners and administrators of pharmacies, and other such persons selling medicines, who give their services to the sick fund.

PAR. 2. The Federal Council shall specify the model forms and the time limits for transmitting them; it may extend the contents of the reports. The reports and balance sheets shall be compiled uniformly at least every four years for the Empire.

## VI. RELATION TO PHYSICIANS, DENTISTS, HOSPITALS, AND PHARMACIES

## ARTICLE 368

The relations between sick funds and physicians shall be regulated by written contract; the sick fund may, with the exception of urgent cases, decline to make payments to other physicians.

## ARTICLE 369

In so far as it would not seriously add to the expenses of the sick fund, its members shall be given the right to choose from at least two physicians. The insured person has free choice among the physicians appointed by the sick fund if he assumes himself the additional costs. But the constitution may specify, however, that the person under treatment may not change the physician during the same case of insurance or during the fiscal year without the approval of the directorate.

## ARTICLE 370

PARAGRAPH 1. If the providing of medical care by a sick fund is seriously endangered by the fact that the sick fund can not make contracts on reasonable conditions with a sufficient number of physicians, or because the physicians do not observe the contract, the superior insurance office (decision chamber) may authorize the sick fund on its application and subject to revocation to grant in place of the care of patients and other necessary medical treatment a pecuniary benefit up to two-thirds of the average amount of their legal pecuniary sick benefit.

PAR. 2. The superior insurance office (decision chamber) may at the same time specify—

1. How the condition of the person who shall receive the benefits may be proved by other means than by medical certificates.
2. That the sick fund may discontinue or withhold the benefits until sufficient proof is submitted.
3. That the obligation of the sick fund to pay benefits ceases if sufficient proof is not submitted within one year after the claim becomes due.
4. That the sick fund may direct those to whom it has to grant medical treatment to go to a hospital, even if the conditions of article 184, paragraph 3, do not exist.

PAR. 3. The sick-fund directorate has the right of appeal to the highest administrative authority against the decision of the superior insurance office (pars. 1 and 2).

#### ARTICLE 371

PARAGRAPH 1. The constitution may authorize the directorate to grant hospital treatment only in certain hospitals, and where the sick fund must grant hospital treatment, to decline to make payments to other hospitals, with the exception of urgent cases.

PAR. 2. Hospitals intended exclusively for charitable or general welfare purposes or established by public unions or corporations, and ready to give hospital treatment on the same conditions as the hospitals designated in paragraph 1, may only be excluded for an important reason and with the approval of the superior insurance office.

#### ARTICLE 372

PARAGRAPH 1. If the medical treatment or hospital care of a sick fund does not satisfy the legal demands of the sick persons, the superior insurance office may, with reservation of article 370, decree at any time that these benefits shall be granted by other physicians or hospitals; the fund shall first be given a hearing.

PAR. 2. This decree shall only apply so long as its purpose requires, and must have the approval of the superior insurance office if it is to be in force for more than one year.

#### ARTICLE 373

PARAGRAPH 1. If the decree is not carried out within the time limit specified, the superior insurance office may itself take the necessary meas-

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Code of January 1, 1913

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ures at the expense of the sick fund. Contracts already made by the sick fund with physicians and hospitals are not affected.

PAR. 2. The fund may appeal against these decrees and measures within one week to the highest administrative authority.

#### ARTICLE 374

Articles 368, 372, and 373 are correspondingly applicable in regard to the relations between hospitals and dentists.

#### ARTICLE 375

PARAGRAPH 1. Within the territory of the sick fund, or with the approval of the local insurance office outside of it, the constitution may authorize the directorate to make preferential contracts with individual owners or administrators of pharmacies for the furnishing of medicines, or in the case of medicines which are for sale in the open market, also with other persons selling them. All owners and administrators of pharmacies in the territory of the sick fund may join in such agreements. The directorate may then, with the exception of urgent cases and with reservation of article 376, paragraph 3, decline to make payments for medicines furnished by other parties.

PAR. 2. Articles 372 and 373 are correspondingly applicable, if the supply of medicines granted by a sick fund does not satisfy the legal demands of the sick persons.

#### ARTICLE 376

PARAGRAPH 1. The pharmacies shall grant to sick funds a discount on medicines from the tariff prices for medicines. The highest administrative authority determines its rate; it may make it dependent for the individual pharmacies on a specified minimum consumption by the sick fund.

PAR. 2. The superior administrative authority determines, with due consideration of local conditions and of the usual retail prices, the maximum prices of such common medicines which may be obtained (in the retail trade) without physicians' prescriptions. These maximum prices must not exceed the amount based on paragraph 1. The highest administrative authority may decree the particulars in this connection.

PAR. 3. If the beneficiaries procure the medicines designated in paragraph 2 from a pharmacy at a price not exceeding the specified price, the superior administrative authority may decree that the sick fund shall not decline payment for the reason that it has agreed on lower prices with persons who are not owners or administrators of pharmacies.



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Code of January 1, 1913

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## SECTION FIVE—SUPERVISION

## ARTICLE 377

PARAGRAPH 1. With reservation of articles 372 to 375 the local insurance office exercises the supervision over the sick funds. It extends also to the observation of the service and sickness regulations.

PAR. 2. If the appeal against a decree of the local insurance office is based on the fact that the decree has no legal foundation and injures a right of the appellant or imposes on him an unwarranted liability, the superior insurance office (decision chamber) shall decide thereon.

PAR. 3. In the case of establishment sick funds for imperial or State establishments, the highest administrative authority may transfer to other authorities the duties of the local insurance office which do not come under the competence of the judgment committee.

## ARTICLE 378

As a representative of the sick fund, the local insurance office itself or through an authorized agent may bring forward claims of an establishment sick fund against the employer resulting from his administration of the resources and keeping of the accounts.

## ARTICLE 379

PARAGRAPH 1. So long as the persons entitled to vote refuse to elect the administrative bodies of the sick fund, the local insurance office (decision committee) shall appoint the members or the substitutes.

PAR. 2. So long as the directorate, or its president, or the committee, refuse to perform the duties they are charged with, the local insurance office shall execute them itself, or through an authorized agent, at the expense of the sick fund.

## SECTION SIX—RAISING OF THE FUNDS

## I. CONTRIBUTIONS

## ARTICLE 380

The means for the sickness insurance shall be collected from the employers and the insured persons.

## ARTICLE 381

PARAGRAPH 1. The persons subject to insurance must pay two-thirds, their employers one-third of the contributions.

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Code of January 1, 1913

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PAR. 2. In the case of guild sick funds the constitution may specify that the employers must pay one-half and the persons subject to insurance the other half of the contributions. Where this is specified by an amendment to the constitution, the decision requires a majority of the representatives of the employers as also those of the insured persons.

PAR. 3. Persons entitled to insure themselves voluntarily must pay the whole of the contributions.

#### ARTICLE 382

The constitution may permit insured persons who temporarily draw lower wages to remain insured in their old higher class of wages, if they themselves undertake to pay the additional amount of the contributions or if the employer consents to such higher rating.

#### ARTICLE 383

PARAGRAPH 1. In case of disability no contributions are to be paid for the duration of the sickness.

PAR. 2. The same is applicable during the receipt of the maternity and pregnancy benefits.

#### ARTICLE 384

PARAGRAPH 1. The constitution may graduate the rates of the contribution according to the branches of industry and classes of employment of the insured persons, and provide for a higher proportion of the part paid by the employer in the case of individual establishments in so far as the risk of sickness is considerably higher.

PAR. 2. Sick funds with family benefits may collect from the insured persons with dependent families an additional contribution, which shall be specified by the constitution in a general manner. Articles 381, 382, and 385 to 403 are not applicable hereto.

PAR. 3. Where the constitution does not as a general rule allow sick benefits for Sundays and holidays, it may correspondingly raise the contributions for members for whom Sundays and holidays are working days.

PAR. 4. Provisions of this kind require the approval of the superior insurance office.

PAR. 5. If the directorate decrees higher contributions for an establishment, the employer has the right of appeal to the local insurance office. In the legal procedure the superior insurance office decides finally.

#### ARTICLE 385

PARAGRAPH 1. The contributions shall be fixed in a percentage of the basic wage in such a manner that, inclusive of the other revenues, they shall be sufficient for the permissible expenses of the sick fund.

PAR. 2. The sick fund shall not collect contributions for other purposes.

PAR. 3. Where doubts arise whether the constitution or its amendment fixes the contributions according to paragraph 1, the superior insurance office shall have the contributions examined by experts before approving them. If they are not sufficient, the approval shall depend on an increase of the contributions or in a reduction of the benefits to a rate not lower than the regular benefits.

#### ARTICLE 386

At the establishment of the sick fund the contributions may be fixed at more than  $4\frac{1}{2}$  per cent of the basic wage only if it is necessary in order to provide the regular benefits.

#### ARTICLE 387

If the receipts of the sick fund do not cover its expenses, inclusive of the amounts for the reserve, benefits shall be reduced to a rate not lower than the regular benefits or the contributions shall be increased, by an amendment to the constitution.

#### ARTICLE 388

The contributions may be increased to more than  $4\frac{1}{2}$  per cent of the basic wage only for the purpose of providing the regular benefits, or on concurring decision of employers and insured persons in the committee.

#### ARTICLE 389

PARAGRAPH 1. If in the case of a local sick fund contributions as high as 6 per cent of the basic wage do not cover the regular benefits, then the contributions may be further increased only on a concurring decision of the employers and of the insured persons in the committee.

PAR. 2. Otherwise the superior insurance office shall order, with reservation of article 268, the consolidation of the fund with other local sick funds. If this should not be possible, or if notwithstanding the consolidation the contributions are not sufficient to provide the regular benefits, the union of communes must pay from its own resources the necessary assistance. As long as this is done it may place the office of president of the sick fund in the hands of a representative.

#### ARTICLE 390

If in the case of a rural, an establishment, or a guild sick fund contributions to the amount of 6 per cent of the basic wage do not cover the regular benefits, the union of communes, with reservation of article 265,

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Code of January 1, 1913

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paragraph 2, in the case of rural sick funds, or the employer in the case of establishment sick funds, and the guild in case of guild sick funds, must provide the necessary assistance from its own resources. As long as this is done, in the case of a rural sick fund the union of communes can place the office of president of the sick fund in the hands of a representative.

#### ARTICLE 391

PARAGRAPH 1. If to maintain or restore its solvency, a sick fund must quickly increase its revenues or reduce its expenses, the local insurance office (decision committee) may temporarily provide, until new regulations as provided by the constitution are made, that as far as necessary the contributions may be increased and the benefits reduced to not lower than the regular benefits; current benefits remain undisturbed.

PAR. 2. On appeal the superior insurance office decides finally.

#### ARTICLE 392

If the revenues of a sick fund exceed the expenses and the reserve has reached double the amount of its legal minimum, the contributions shall be reduced or the benefits shall be increased by means of an amendment to the constitution.

### II. PAYMENT OF THE CONTRIBUTIONS

#### ARTICLE 393

The employers must pay the contributions for their employees subject to insurance on the days fixed by the constitution. The days for payment may at the most be one month apart. On the same days the persons entitled to insure themselves voluntarily must pay their contributions.

#### ARTICLE 394

PARAGRAPH 1. At the time of the payment of wages, the persons subject to insurance must permit their share of the contribution to be deducted from the cash wages. Only in this manner may the employers reimburse themselves for the shares of the contribution.

PAR. 2. The highest administrative authority may specify in what manner the share of the contributions of persons subject to insurance is to be refunded from their remuneration, if the same consists only of payments in kind or is paid by third parties.

#### ARTICLE 395

PARAGRAPH 1. The deductions for the share of contributions are to be divided evenly among the wage periods in which they fall. The partial

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Code of January 1, 1913

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amounts may without imposing an additional burden on the insured persons be rounded off to amounts of even 10 pfennigs [2.38 cents].

PAR. 2. If deductions were not made for a wage period, they may be deducted only at the wage payment of the next wage period, if the contributions are not paid at a later time without any fault on the part of the employer.

PAR. 3. In the case of servants payments on account are not considered as wage payments.

#### ARTICLE 396

PARAGRAPH 1. If the insured person is at the same time in several employment relations subject to insurance, the employers are collectively liable for the contributions.

PAR. 2. On application of one of the employers the local insurance office shall apportion the contributions.

#### ARTICLE 397

PARAGRAPH 1. The contributions must be paid continuously until notice of leaving has been given according to the regulations.

PAR. 2. If the insured person leaves an employment between two pay days, and if due notice of his leaving has been given, the contributions paid in advance shall be refunded in proportion to the time.

PAR. 3. In case of establishment sick funds the contributions must be paid continuously until the termination of membership.

PAR. 4. The constitution can specify that contributions shall always be collected and refunded for full weeks.

#### ARTICLE 398

PARAGRAPH 1. On application of a local, a rural, or a guild sick fund, as also on application of members of the administrative bodies of an establishment sick fund, the local insurance office (decision committee) may decree, with the right of revocation, that employers who are in arrears with the payment of contributions, and who in a process of execution have shown themselves to be bankrupt, shall pay their own share of the contributions only. The persons subject to insurance employed by them shall then themselves pay their share of the contributions on pay days.

PAR. 2. Against this decree the employer may appeal to the superior insurance office (decision chamber). It decides finally.

#### ARTICLE 399

The decree must designate the employer to whom it is applicable, together with his name, residence, and place of business. He shall be

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Code of January 1, 1913

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notified of it in writing, as also the police authorities of his place of residence and of his place of business, if it be elsewhere. If the employer changes his residence or his place of business, the police authorities shall notify the competent authorities of his new place of residence or place of business.

#### ARTICLE 400

The employer shall notify the persons subject to insurance employed by him of the decree by placarding it permanently in the work places, and at each wage payment call their attention to the fact that they themselves must pay their share of the contributions.

#### ARTICLE 401

The local insurance office (decision committee) revokes the decree as soon as it has proof by the certificate of the sick fund directorate that all arrears and overdue obligations of the employer to the sick fund have been discharged.

#### ARTICLE 402

So long as the decree concerning employers who in a process of execution have been shown to be bankrupt has not been issued, they must make the deduction from the wages and must pay the amount, at the latest within three days, to the sick fund entitled thereto.

#### ARTICLE 403

The constitution of a local, a rural, or a guild sick fund may specify under what conditions the sick fund must demand advances from the employers.

#### ARTICLE 404

PARAGRAPH 1. On application of the sick funds affected the local insurance office (decision committee) may specify that the joint places of registration shall also be pay offices to accept contributions and pay benefits.

PAR. 2. With the approval of their supervisory authorities, it may transfer to the local authorities the business of the pay offices.

PAR. 3. The local insurance office may, with their consent and with an agreement as to the costs, assist the sick funds in the collection of the contributions.

PAR. 4. The communal supervisory authority may appoint, after a hearing of the sick fund, the officials conducting the business as officials to make compulsory collections.

Code of January 1, 1913

## ARTICLE 405

PARAGRAPH 1. If a dispute arises between the employer and his employes relating to the computation and apportionment of their share of the contributions, the local insurance office (decision committee) decides finally.

PAR. 2. If a dispute arises between an employer, or an insured person, or a person insured up to the present, or a person to be insured, and a sick fund relating to the insurance status or the liability to make, pay, or refund contributions, then the local insurance office (decision committee) shall decide and on appeal the superior insurance office shall decide finally.

PAR. 3. Final decisions as to the insurance status are binding for all authorities and courts. If the membership of an insured person has been definitely declined by all sick funds affected because they hold that he should belong to another of them, the sick fund to which he properly belongs shall be determined on application by the local insurance office (decision committee) or the superior insurance office (decision chamber) having jurisdiction of the funds, or in the absence of such by the highest administrative authority, without being bound by previous decisions.

## SECTION SEVEN.—FEDERATIONS OF FUNDS—SECTIONS

## ARTICLE 406

PARAGRAPH 1. On concurring decision of their committees, sick funds may combine in a federation of funds, if the seat is in the district of the same local insurance office.

PAR. 2. With the approval of the superior insurance office (decision chamber), or, if it is refused, with the approval of the highest administrative authority, a federation of funds may embrace districts or parts of districts of several local insurance offices. The superior insurance office specifies finally which local insurance office shall exercise supervision.

## ARTICLE 407

The federation of funds may do the following in common for the affiliated funds:

1. Appoint employes and officials;
2. Prepare or conclude contracts with physicians, dental surgeons, dental assistants, owners and administrators of pharmacies, or other dealers in medicines, with hospitals, as also for the furnishing of therapeutic appliances and other necessities for the care of patients;
3. Supervise the patients according to uniform principles;

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Code of January 1, 1913

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4. Establish and conduct medical institutions and convalescent homes;
5. Defray the expenses for benefits up to one-half, or within this limit defray the expenses for specified kinds of sickness or cases of sickness up to the whole amount.

#### ARTICLE 408

PARAGRAPH 1. A constitution for the federation of funds shall be formulated by a concurring decision of the interested committees of the sick funds. It requires the approval of the superior insurance office. Article 324, paragraphs 2 and 4, is applicable to the refusal of the approval.

PAR. 2. Articles 4 to 34 are here correspondingly applicable.

#### ARTICLE 409

The constitution must specify the following:

1. Name and seat of the federation and of the affiliated funds;
2. Object of the federation;
3. Composition, election, rights, and duties of the directorate, and of the elected committee, if there be such;
4. Determination of the preliminary budget and acceptance of the annual balance sheet;
5. Assessment of the contributions for covering the expenses of the federation, as also the assessing and accounting of the subsidy, if such be necessary;
6. Amendment of the constitution.

#### ARTICLE 410

The provisions applicable to sick funds contained in articles 368 to 376 are also correspondingly applicable to federations of funds.

#### ARTICLE 411

PARAGRAPH 1. At the end of the fiscal year each sick fund may withdraw from the federation if it has submitted to the directorate a notice of withdrawal at least six months in advance.

PAR. 2. The committees of the funds affected may dissolve the federation by concurring decision.

PAR. 3. The fund which has withdrawn is collectively liable for the obligations of the federation existing at the time of its withdrawal. Claims against the fund on account of these liabilities lapse in two years after the withdrawal, so far as the claim against the federation is not subject to a shorter limitation; if the claim against the federation matures only



after the withdrawal, the period of limitation begins with the date when it becomes due.

#### ARTICLE 412

PARAGRAPH 1. At the withdrawal of a fund or at the dissolution of the federation, each withdrawing fund receives a share of the net assets (art. 293), which corresponds for the last fiscal year to the proportion of its contributions to the total contributions to the federation. In the case of a deficit, each withdrawing fund shall contribute in the same proportion.

PAR. 2. Other arrangements may be made by the constitution or by mutual agreement.

#### ARTICLE 413

PARAGRAPH 1. The local insurance office has the supervision of the federation. Articles 377 to 379 are here correspondingly applicable.

PAR. 2. Articles 349 to 361 are correspondingly applicable to the employés of the federation; also articles 363 and 365 to the administration of the resources. The Federal Council may specify how far articles 366 and 367 are applicable.

PAR. 3. The local insurance office (decision committee) decides in case of a dispute between the federation and the different funds in regard to federation relations.

#### ARTICLE 414

For combinations of funds of other kinds, to promote the general objects of sickness relief, the resources of the funds shall only be used with the approval of both groups in the directorate. With the approval of the highest administrative authority, such combinations of funds may also undertake some of the special duties designated in article 407.

#### ARTICLE 415

With the approval of the superior insurance office, sick funds may establish sections for specified groups of their members or for specified districts and assign to them a part, but at the most two-thirds of the revenues and benefits. Particulars relating to organization, administration, duties, and competence, shall be specified in the constitution.

### SECTION EIGHT.—SPECIAL OCCUPATIONS

#### I. GENERAL PROVISION

#### ARTICLE 416

The provisions of this book are applicable together with the special provisions of—

## Code of January 1, 1913

- Articles 417 to 434, to persons employed in agriculture;
- Articles 435 to 440, to servants;
- Articles 441 to 458, to persons employed temporarily;
- Articles 459 to 465, to persons employed in itinerant trades;
- Articles 466 to 493, to persons engaged in home industries and to their home-working employés;
- Article 494, to apprentices.

## I. AGRICULTURE

## ARTICLE 417

The following persons are considered as employed in agriculture:

1. If they are employed in agricultural subsidiary establishments (Arts. 918 to 921).
2. If they are employed in agricultural establishments which are subsidiary establishments of an industrial establishment, and according to article 540 are not insured in an industrial accident association (*Berufsgenossenschaft*), by the constitution of the same.

## ARTICLE 418

PARAGRAPH 1. Whoever in case of sickness has a legal claim for relief against his employer which is equivalent to the benefits of the competent sick fund shall on application of the employer be exempted from the insurance obligation.

PAR. 2. The prerequisite is that—

1. The employer defrays the entire relief from his own resources;
2. His solvency is assured;
3. That he makes application for all of his agricultural employees in so far as they are obligated by contract for at least two weeks' regular work.

PAR. 3. Article 175 is hereby applicable with the provision that the superior insurance office in place of the local insurance office decides finally.

## ARTICLE 419

PARAGRAPH 1. The exemption is in force only for the duration of the labor contract. It ceases earlier if the employer registers all his exempt employees at the sick fund, or if the local insurance office itself, or on application of an exempt employee, determines that the employer is insolvent. The sick fund is not liable for benefits in cases of insurance which have already occurred when the exemption expires or which occur in the

Code of January 1, 1913

case of article 214 in the first three weeks after this lapse; this does not affect the claim of the person exempted against his employer.

PAR. 2. Article 313 is applicable to the persons exempted, but shall be construed as if these persons had been members of the sick fund up to the expiration of the exemption articles 195 to 200, and 224, are here also correspondingly applicable.

#### ARTICLE 420

PARAGRAPH 1. On application of the employer the contributions to the fund shall be correspondingly reduced for the duration of the labor contract, and the claim of the insured persons to a pecuniary benefit shall cease, if it is shown that at least—

1. The labor contract has been concluded for one year;

2. The insured persons are in receipt—

Either for the whole year, of payments in kind equivalent to 300 times the daily pecuniary benefit provided by the constitution,  
Or for each working day, of a payment equivalent to this pecuniary benefit;

3. That they have a legal right to these benefits for the duration of the labor contract.

PAR. 2. If the insured person is sick and incapacitated for work beyond the duration of the labor contract, then his claim to a pecuniary benefit shall again come into force. The employer must refund to the sick fund the pecuniary benefit. Article 28 is correspondingly applicable.

PAR. 3. The contributions shall be reduced by the constitution with the approval of the superior insurance office, according to the relation of the pecuniary benefit to the value of the other benefits of the fund.

#### ARTICLE 421

With the approval of the superior insurance office, the constitution may reduce the pecuniary benefit for insured persons who according to their labor contract are entitled in cases of sickness to benefits of less amount than those designated in article 420, paragraph 1, number 2; the contributions shall be correspondingly reduced.

#### ARTICLE 422

PARAGRAPH 1. So far as the employer does not grant the relief (arts. 418 and 419), the sick fund shall on application of the person exempted grant the benefits provided by the constitution; if the employer does not furnish the benefits required by the contract (arts. 420 and 421), the fund must pay a pecuniary benefit to the sick member on application.

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Code of January 1, 1913

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PAR. 2. The employer must reimburse the sick fund for what it has paid. Article 28 is correspondingly applicable.

PAR. 3. In disputes over the claim to reimbursement (par. 2, and art. 420, par. 2), the local insurance office decides in judgment procedure.

#### ARTICLE 423

PARAGRAPH 1. With the approval of the superior insurance office, the constitution of a rural sick fund may specify that insured persons, who on the basis of the imperial insurance have been granted a permanent yearly pension amounting to 300 times the daily pecuniary benefit provided by the constitution, shall receive no pecuniary benefit.

PAR. 2. The contributions of these members shall be correspondingly reduced (art. 420, par. 3).

PAR. 3. With the approval of the superior insurance office, the constitution may specify a lower basic wage than the local wages for employees who are partially and permanently disabled.

#### ARTICLE 424

With the approval of the superior insurance office, and as a general measure or for specified groups of insured persons, the constitution of a rural sick fund may reduce the pecuniary benefit to one-fourth of the local wages for the period from October 1 to March 31, or for a part of this period; it must reduce the contributions for the same period correspondingly or increase the pecuniary benefit within the limits permitted for the remainder of the period. The same is correspondingly applicable to house money.

#### ARTICLE 425

The provisions of articles 420 to 423 applicable to the pecuniary benefit are also applicable to the other cash benefits of the fund with the exception of the funeral benefit.

#### ARTICLE 426

For the territory of the federal State or for parts of it the highest administrative authority may permit the rural sick funds to introduce extended sick treatment for sick persons incapacitated for work.

#### ARTICLE 427

The constitution may contain such provisions only if in the district of the rural sick fund—

1. The productive capacity of the agricultural employes or their employers would be impaired otherwise;

2. The presence of a sufficient number of hospitals and similar medical institutions assures the execution of the extended sick treatment.

#### ARTICLE 428

Such provision requires the approval of the superior insurance office; in districts in which agricultural employes are already insured according to the general provisions of this book or according to the sickness insurance law the approval required is that of the highest administrative authority.

#### ARTICLE 429

Extended sick treatment consists of medical treatment and maintenance in a hospital or a similar medical institution in the place of the care of patients and of the pecuniary benefit. This extended benefit is considered as a regular benefit.

#### ARTICLE 430

PARAGRAPH 1. A disabled sick person need not be removed to a medical institution if, according to a medical opinion, it would not promote his cure.

PAR. 2. If through no fault of his own the disabled sick person is not taken to a medical institution, then the rural sick fund must grant the legal sick relief. The constitution may specify that under the conditions mentioned in articles 420 and 421 the pecuniary benefit shall not be paid entirely or partly, but shall be credited to the contributions of the insured persons which will become due at the next time of payment.

#### ARTICLE 431

As long as the sick person declines hospital treatment in a case where such treatment requires his own consent, according to article 184, he has only a claim to medical treatment and to half the pecuniary benefit if he has up to the present supported his relatives either wholly or principally with his earnings, unless the constitution provides otherwise.

#### ARTICLE 432

PARAGRAPH 1. The constitution shall specify in the case of extended sick treatment whether and in what amount house money is to be granted in addition to the hospital treatment.

PAR. 2. Where the constitution prescribes extended sick treatment it may at the same time fix a maximum funeral benefit of 30 marks [\$7.14].

PAR. 3. The constitution may confine the granting of extended sick

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Code of January 1, 1913

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treatment to cases of insurance occurring during unemployment and within three weeks after membership has ceased.

PAR. 4. It shall correspondingly reduce the contributions for the insured persons who in case of sickness are entitled only to the extended sick treatment.

#### ARTICLE 433

If the constitution of a rural sick fund contains specifications according to articles 423 to 432, the constitutions of agricultural establishment sick funds which have their seat in the district of the rural sick fund may specify the same regulations.

#### ARTICLE 434

Articles 503 and 517 to 520 are not applicable to agricultural employees with exception of the gardeners and of industrial workmen temporarily employed in agriculture; the Federal Council shall specify what employments shall be considered as temporary.

### III. SERVANTS

#### ARTICLE 435

Articles 418, 419, 422, and 426 to 434 are also applicable to the insurance of servants; however, the introduction of the extended sick treatment is not restricted by the conditions mentioned in article 427, paragraph 1, and the superior insurance office is always the competent office for the approval. On application of the employer or of the insured person, removal to a medical institution shall not occur if, according to a medical opinion, it is not necessary.

#### ARTICLE 436

The employer may deduct the pecuniary benefit from the wages which he must continue to pay to the servant during the sickness.

#### ARTICLE 437

Even where the constitution does not provide for extended sick treatment, the sick fund must grant it on application of the employer or of the servant, to a servant residing in the household, if the sickness is contagious; or if because of the nature of the sickness he can not be treated or taken care of in the household or this can be done only with considerable inconvenience to the employer.

#### ARTICLE 438

PARAGRAPH 1. In a dispute between the employer and the sick fund in

Code of January 1, 1913

regard to this kind of obligation (art. 437) the local insurance office decides finally.

PAR. 2. On its application the local insurance office may exempt the sick fund from the extended sick treatment in cases where without fault on the part of the sick fund such treatment can not be provided.

#### ARTICLE 439

If servants are also employed in the establishment or in another business undertaking of the employer, such employment, so far as it is not by itself exempt from insurance according to article 168, shall be determinative for their insurance and for the claims against the employer which they have in cases of sickness according to the law or constitution.

#### ARTICLE 440

PARAGRAPH 1. The State government may specify that servants are exempt from insurance according to this law if, at its publication, relief provision in case of sickness has been provided for them by State law.

PAR. 2. In extent and duration this relief must be at least equivalent to the regular benefits of the sick funds, or must be made equivalent within six months after the coming into force of this law.

PAR. 3. The contributions collected for a servant in this connection must not be higher than the shares of contribution that he would have to pay according to this law.

### IV. TEMPORARY EMPLOYMENT

#### ARTICLE 441

The employment is defined as temporary if by its nature it is usually restricted to less than one week, or if it is restricted by the labor contract in advance.

#### ARTICLE 442

PARAGRAPH 1. Persons employed temporarily who are not exempt from insurance according to article 168 shall be insured in the general local sick fund, or if they are principally employed in agriculture in the rural sick fund of their place of residence.

PAR. 2. The sick fund must keep an alphabetical membership list of such persons and must keep it up to date.

PAR. 3. The membership in the sick fund begins with the registration in this list.

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Code of January 1, 1913

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## ARTICLE 443

As soon as a sick fund is informed that a temporarily employed person of its district does not belong to a sick fund, although subject to insurance, it must itself register such employé.

## ARTICLE 444

PARAGRAPH 1. Persons subject to insurance must report themselves for registration.

PAR. 2. The local insurance office, the communal and the police authorities, the place of issue of receipt cards (art. 1419), as well as the administrative bodies and the employés of the insurance carriers, must notify the proper sick fund of every person subject to insurance who is temporarily employed and who is not already a member of a sick fund.

PAR. 3. The highest administrative authority may regulate the particulars concerning this duty.

## ARTICLE 445

The sick fund may summon persons employed temporarily to decide upon their insurance obligation and compel them by a fine of not more than 10 marks [\$2.38] to comply with the summons.

## ARTICLE 446

The person registered continues to be a member also during the time in which he is not temporarily employed for compensation.

## ARTICLE 447

PARAGRAPH 1. The insured person shall on his resignation be taken off the list if he produces proof that he has become a member of another fund, or that he has given up the temporary employment and has done so not merely temporarily.

PAR. 2. He shall also be taken off the list if the sick fund establishes these facts in any other manner, or if it learns that the insured person has died or has moved to the district of another sick fund.

PAR. 3. A person who has been taken off the list may continue to be a member according to article 313. The constitution shall specify the particulars concerning contributions and benefits.

## ARTICLE 448

PARAGRAPH 1. If the insured person again resigns from the other sick fund (art. 447), or again takes up the temporary employment, he shall immediately apply again for registration in the list.



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Code of January 1, 1913

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PAR. 2. The sick fund shall supervise the insurance status of such persons.

#### ARTICLE 449

PARAGRAPH 1. If the insured person has been registered by an employer at his sick fund according to article 317, then this fact is to be noted on the list.

PAR. 2. Membership based on this registration continues the earlier membership without interruption.

PAR. 3. After notice of leaving has been given through the employer, the notation on the list shall be canceled.

#### ARTICLE 450

PARAGRAPH 1. The contributions and the benefits shall be established by the constitution in each case according to the local wage rates; in such case it may increase by supplementary charges the rates of local wages for individual groups of persons temporarily employed. The approval of the superior insurance office is required for the rates so established.

PAR. 2. Paragraphs 2 and 3, of article 423, may be applied.

PAR. 3. The sick fund shall enter these contributions and benefits in separate accounts.

PAR. 4. The persons employed temporarily must themselves pay their share of the contribution (art. 381, par. 1).

PAR. 5. They have a claim to additional benefits of their sick fund provided by the constitution only in so far as the constitution so specifies.

#### ARTICLE 451

PARAGRAPH 1. The constitution may specify that persons employed temporarily shall have a claim to sick-fund benefits only after a waiting term of not more than 6 weeks.

PAR. 2. If an earlier membership existed not longer than 26 weeks previous, then its duration shall be included in the waiting term.

#### ARTICLE 452

PARAGRAPH 1. If a person employed temporarily before his sickness, has not paid his share of the contributions for more than 8 weeks during the last 26 weeks, he shall receive only medical treatment; the funeral benefit may not exceed 30 marks [\$7.14].

PAR. 2. The same is applicable to an insured person who has been a member less than 26 weeks, if he has not paid his share of the contributions for more than one-fourth of the duration of the insurance.

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Code of January 1, 1913

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## ARTICLE 453

At the end of each quarter the union of communes must pay to the sick fund the total amount of the shares of the contributions of the employers, for which an account is submitted:

## ARTICLE 454

PARAGRAPH 1. The union of communes may assess this amount in such a manner that it is paid either by all the inhabitants of the sick-fund district, or separately by the local sick funds and the rural sick funds of the district according to the number of inhabitants affected.

PAR. 2. Inhabitants who are accustomed to employ persons temporarily either in large numbers, or for long periods of time, shall be assessed at a higher rate in such cases.

## ARTICLE 455

PARAGRAPH 1. With the approval of the union of communes and of the superior insurance office, the constitution may specify that persons temporarily employed shall not pay any share of the contributions.

PAR. 2. In such a case the sick fund shall grant them only the benefits described in article 452, paragraph 1.

## ARTICLE 456

PARAGRAPH 1. The State government may specify how far an approval is necessary for decisions of the union of communes made according to articles 454 and 455.

PAR. 2. It may specify the legal procedure permissible against the assessment (art. 454).

## ARTICLE 457

In their capacity as employers of temporary employees, as well as persons temporarily employed who do not pay any contributions according to article 455, they are neither entitled to hold office in the sick fund nor entitled to vote.

## ARTICLE 458

PARAGRAPH 1. For the federal State or for parts of it, the State government may regulate the registration and payment of contributions for persons temporarily employed in other ways.

PAR. 2. The State government may also decree that persons temporarily employed shall be insured according to the general provisions of this book, though if they are employed in agriculture, then according to the

provisions specially applicable thereto, if the State government itself or a statute of the union of communes or the constitution of the sick fund, takes care that the insurance, especially the registration, shall be administered properly and that the contributions shall be correctly paid.

#### V. ITINERANT TRADES

##### ARTICLE 459

PARAGRAPH 1. The employer, who must have an itinerant trade license, must register the persons employed in his itinerant establishment, if he intends to take them with him from place to place; he must, however, register only their number and have this number made members in the rural sick fund of the place where he applied for the license from the police authority.

PAR. 2. Employés in excess of the number registered and for whom he has requested a permit only after the receipt of the license according to article 62 of the Industrial Code must be registered through the intervention of the authority competent for this permit.

##### ARTICLE 460

PARAGRAPH 1. At the registration the employer must pay in advance the contributions either for the period up to the expiration of the itinerant trade license, or for a shorter period, with the permission of the directorate of the fund.

PAR. 2. If the license or the permit (art. 459, par. 2) is revoked or the establishment shuts down otherwise, then the directorate on application shall refund the excessive contributions; the directorate shall also make a refund for the full calendar weeks, for which it can be shown that the employer did not take the persons with him.

##### ARTICLE 461

PARAGRAPH 1. In the case of article 459, paragraph 1, the sick fund shall certify according to the model form determined by the federal council, the contributions which have been received or postponed, together with a statement of the basic wage and of the weekly contribution. This certificate is to be submitted to the police authorities when application is made for the itinerant trade license.

PAR. 2. In the case of article 459, paragraph 2, the contribution shall be paid to the authority there designated, and shall be transmitted by them to the competent rural sick fund.

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Code of January 1, 1913

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PAR. 3. The itinerant trade license may be granted only if the certificate is produced, the permit only if the contributions have been paid.

PAR. 4. The basic wage and the weekly contributions shall be stated on the itinerant trade license.

#### ARTICLE 462

PARAGRAPH 1. The insured person shall receive the regular benefits of the sick funds. Article 382 is not applicable to them. The constitution may specify that the insured person on his own application shall also have a claim to the additional benefits of the sick fund as long as the persons to whom they are to be granted remain in the district of the sick fund.

PAR. 2. If the sick fund grants more to its other members, it may correspondingly reduce the contributions of persons employed in itinerant trades.

#### ARTICLE 463

PARAGRAPH 1. For the periods which are not more than one month back the employer may deduct from the wages of the insured persons two-thirds of the contributions paid by him for them.

PAR. 2. The local insurance office of the place where they are staying decides in a dispute as to the deductions.

#### ARTICLE 464

A person who carries on an itinerant trade for another (art. 60d, par. 2, of the Industrial Code) shall have the rights and duties of the employer according to articles 459 to 463.

#### ARTICLE 465

PARAGRAPH 1. The Federal Council may specify the particulars for the execution of articles 459 to 464.

PAR. 2. It may specify how far persons who are employed by an employer without itinerant trade license in his itinerant trade establishment (art. 59 of the Industrial Code) and whom he takes with him from place to place, are subject to insurance, and it may regulate their insurance otherwise than as stated in articles 459 to 464.

### VI. HOME-WORKING INDUSTRIES

#### ARTICLE 466

PARAGRAPH 1. Persons engaged in home-working industries, who are not exempt from insurance according to article 168, shall, so far as the law

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Code of January 1, 1913

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does not otherwise prescribe or permit, be insured in the rural sick fund in whose district they have their own working place, without regard to the seat of the establishment of the person who gives them the order.

PAR. 2. Their home-working employés shall be insured in the same fund.

#### ARTICLE 467

The Federal Council may specify under what conditions persons engaged in home-working industries, to whom a yearly total minimum income of 2,500 marks [\$595] is assured, may on their application, be exempted from insurance as regards their own person.

#### ARTICLE 468

PARAGRAPH 1. Article 442, paragraphs 2 and 3, and articles 443 to 449, are correspondingly applicable to persons engaged in home-working industries and their home-working employés (persons engaged in home-working industries subject to insurance.)

PAR. 2. Without prejudice to these provisions, persons engaged in home-working industries who regularly employ, apart from the members of the family in the household, at least two persons subject to insurance as home workers, shall register themselves and all employés in the sick fund for the purpose of entry in the list according to articles 317 to 319, and shall withdraw the names in the same manner.

#### ARTICLE 469

The resources for the sickness insurance shall be raised partly by subsidies from those persons on whose order and for whose account the work is done on the home-work system (subsidies of the persons giving the order), partly from the persons engaged in home-working industries themselves and partly from their home-working employés (contributions).

#### ARTICLE 470

PARAGRAPH 1. The subsidies of the persons giving the order shall be based only on the wages which they pay to the persons engaged in home-working industries for the delivered work; no attention shall be paid to the facts as to whether the individual person engaged in home-working industries belongs to a sick fund, to which sick fund he belongs, or what contributions he pays for himself and his employés in the fund.

PAR. 2. The value of raw materials and supplies which the person engaged in a home-working industry has furnished, may be left out of consideration in computing the wages.

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Code of January 1, 1913

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## ARTICLE 471

The subsidies of the persons giving the order shall be computed uniformly for all industry branches and for the territory of the Empire in such a manner that in any one year their total amount shall cover half of the total cost which would accrue to the rural sick funds if they should grant the regular benefits with the local wages as the basic wage, and if all persons engaged in home-working industries subject to insurance should belong to them.

## ARTICLE 472

PARAGRAPH 1. The subsidies of the persons giving the order are fixed up to December 31, 1914, at 2 per cent of the wages paid.

PAR. 2. Thereafter the Federal Council shall determine them for four-year terms after a hearing of the accounting bureau of the Imperial Insurance Office; for the first 10 years after the coming in force of this law the Federal Council is not restricted to these periods.

## ARTICLE 473

PARAGRAPH 1. During the first week of each month, the person giving the order must transmit to the rural sick fund of the seat of his establishment a list of the persons engaged in home-working industries employed during the past month.

PAR. 2. Where no rural sick fund exists for the seat of the establishment of the person giving the order, the list is to be transmitted to the general local sick fund.

## ARTICLE 474

PARAGRAPH 1. In the list there shall be stated the name and the seat of the establishment of the person engaged in home-working industries as well as the amount of the earnings.

PAR. 2. If the value of the raw and other materials furnished by the person engaged in home-working industries have been included, then the quantity and value of these materials shall also be given as well as the amount actually paid after deduction of their value.

## ARTICLE 475

PARAGRAPH 1. On application of the person engaged in home-working industries, the local insurance office competent for his residence determines finally as to the value of the raw and other materials.

PAR. 2. For industries in which home work is customary in the district, the local insurance office shall itself determine the average value of raw and other materials and verify such valuations from time to time. On

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Code of January 1, 1913

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appeal the superior insurance office decides finally. On application, the local insurance office communicates the average value to the person engaged in home-working industries, the person who gives the order, and to his sick fund (art. 473).

#### ARTICLE 476

This fund must communicate the list of persons engaged in home-working industries not insured with itself, to the fund in which they are designated as members. In case of doubt the list shall be communicated to the proper fund by the local insurance office to which the working place of the person engaged in home-working industries belongs.

#### ARTICLE 477

PARAGRAPH 1. When transmitting the lists, the person who orders the work shall pay the subsidies due. The computed amounts are to be rounded off to even pfennings.

PAR. 2. Until the time of the mutual balancing of accounts (art. 492, par. 2) the fund must keep in custody the subsidies paid to it for the account of other funds.

#### ARTICLE 478

PARAGRAPH 1. The fund to which the person engaged in home-working industries belongs, must credit him with the subsidies paid for him according to the lists.

PAR. 2. If subsidies have been paid by the persons giving the order for noninsured persons, or if for other reasons the subsidies can not be credited to an insured person, the fund must use them to cover any deficits which arise out of the insurance of persons subject to insurance in home-working industries.

PAR. 3. If the result of the last three fiscal years shows that a considerable surplus is available, it must be used for the purposes of reducing the contributions or of increasing the benefits for persons subject to insurance in home-working industries.

#### ARTICLE 479

PARAGRAPH 1. The provisions relating to disputes over contributions (art. 405) are correspondingly applicable to disputes over subsidies.

PAR. 2. The persons giving the order have the status of employers for the purposes of articles 137 to 140.

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Code of January 1, 1913

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## ARTICLE 480

PARAGRAPH 1. The constitution shall determine specifically the contributions which persons engaged in home-working industries must pay for themselves and for their home-working employés, as well as the sick benefits for these persons.

PAR. 2. The local wages serve as the basic wage.

## ARTICLE 481

PARAGRAPH 1. The contributions are to be computed in such a manner that, together with the subsidies of the persons who give the order, they shall cover the cost which accrues to the fund from the insurance of its members engaged in home-working industries.

PAR. 2. As long as the amount of the subsidies can not be approximately determined, the contributions of the members engaged in home-working industries are to be computed in such a manner that they shall cover one-half of the cost which would accrue to the sick fund by granting the regular benefits to these members.

PAR. 3. The general provisions relating to contributions are correspondingly applicable to the contributions which the person engaged in home-working industries has to pay for himself and his home-working employees.

## ARTICLE 482

PARAGRAPH 1. The sick benefits shall consist of a pecuniary benefit in addition to medical treatment.

PAR. 2. The amount of the pecuniary benefit is based on the amount of the subsidies of persons giving orders which have been credited to the person engaged in home-working industries. Unless the constitution specifies otherwise, the pecuniary benefit in such case stands in the same relation to the legal pecuniary benefit as the amount of the subsidies credited during the last fiscal year to the person engaged in home-working industries stands to that of all the contributions, which the person engaged in home-working industries has paid during this period; higher benefits than those prescribed by the constitution shall not be granted.

PAR. 3. If the insurance has been in force only a short time then the contributions of this period only shall serve as basis.

## ARTICLE 483

With the approval of the superior insurance office the constitution may specify how far the pecuniary benefit shall be reduced or withheld, if the person engaged in home-working industries is in arrears with his contributions.



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Code of January 1, 1913

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## ARTICLE 484

PARAGRAPH 1. Whatever is applicable to the pecuniary benefit is also applicable to the other cash benefits of the fund, but with the exception of the funeral benefit.

PAR. 2. With the approval of the superior insurance office the constitution may graduate the funeral benefit according to article 482, paragraphs 2 and 3. „

## ARTICLE 485

PARAGRAPH 1. On his application the fund shall permit the person engaged in home-working industries to pay double the amount of the contributions. The constitution may specify the particulars, such as when he may make the application and withdraw it. The share of the contributions of his home-working employés is not changed in such cases.

PAR. 2. In this case the subsidies paid in for him shall be paid over or credited to the person engaged in home-working industries. He and his employés subject to insurance are entitled to the full benefits which the constitution prescribes for insured persons engaged in home-working industries.

PAR. 3. The subsidies shall also be paid over or credited to persons engaged in home-working industries who are insured on account of other employment subject to insurance.

## ARTICLE 486

PARAGRAPH 1. If persons engaged in home-working industries are permanently employed only by the same person giving the order, with their consent he may also pay their contributions.

PAR. 2. He may then collect the contributions from the person engaged in home-working industries in the same manner as an employer collects the share of contributions from insured persons. The payment of the earnings is in such a case considered as the same as the payment of wages.

## ARTICLE 487

Articles 426 to 432 are here correspondingly applicable.

## ARTICLE 488

PARAGRAPH 1. If when this law comes into force the insurance of persons engaged in home-working industries is already regulated by statutory provisions for a given district or an industry, then the highest administrative authority may on application of the communes or of the union of communes affected permit the statutory provisions to remain in force.

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Code of January 1, 1913

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PAR. 2. The approval is conditional upon the fact that the person giving the order and the person engaged in home-working industries have their establishment seat in the district of the local insurance office, or in the larger district determined by the highest administrative authority according to local requirements, and that the benefits granted to persons engaged in home-working industries are at least equivalent to those granted by this law.

PAR. 3. Amendments to the statutory provisions require the approval of the highest administrative authority.

PAR. 4. Subsidies received from other persons giving orders to one engaged in home-working industries shall be paid or credited to him.

#### ARTICLE 489

PARAGRAPH 1. The union of communes may by statute exempt the person subject to insurance engaged in home-working industries from the obligation of contribution and assume itself the costs, in so far as they are not covered by the subsidies of the persons giving the order; article 485, paragraphs 1 and 2, is then applicable.

PAR. 2. In such a case it may be specified that the fund shall grant to these persons subject to insurance only the benefits designated in article 452.

PAR. 3. The statute must have the approval of the superior insurance office (decision chamber), and the provisions of paragraph 2 must have the approval of the highest administrative authority.

#### ARTICLE 490

PARAGRAPH 1. The State government may decree that in districts in which the persons engaged in home-working industries are unable to pay contributions, the union of communes shall assume the costs designated in article 489, paragraph 1.

PAR. 2. The insured persons engaged in home-working industries shall then receive only the benefits specified in article 452; article 485, paragraphs 1 and 2, is not applicable.

#### ARTICLE 491

PARAGRAPH 1. Where persons engaged in home-working industries are employed by intermediaries, such as persons who give the work out, factors, or subcontractors (*Zwischenmeister*) on the order of the third party, then the latter is considered as the person who gives them the order.

PAR. 2. The Federal Council may transfer to the intermediaries either all or part of the duties of the person who gives the order; the person who gives the order must refund to them the subsidies already paid.

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Code of January 1, 1913

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## ARTICLE 492

PARAGRAPH 1. The Federal Council shall specify the manner in which the provisions relating to the insurance of persons engaged in home-working industries shall be executed.

PAR. 2. It shall especially regulate the manner in which the sick funds shall account for the subsidies among each other. It may order the participation of the accounting bureau of the Imperial Insurance Office in the accounting. It shall draw up the model forms for the lists and shall specify the bases which must be submitted for the reëxamination of the subsidies.

## ARTICLE 493

The Federal Council may specify the manner in which German persons who give orders to foreign persons engaged in home-working industries may be drawn on for contributions for the sickness insurance of persons engaged in home-working industries which they would have to pay if they employed Germans, and how these payments are to be used. It may punish contraventions of these provisions with a fine of not more than 300 marks [\$71.40].

## VII. APPRENTICES

## ARTICLE 494

PARAGRAPH 1. No pecuniary benefit shall be granted to any class of apprentices who are employed without compensation.

PAR. 2. The contributions shall be correspondingly reduced.

## SECTION NINE.—MINERS' SICK FUNDS

## ARTICLE 495

PARAGRAPH 1. In their constitutions the miners' sick funds must grant to their members at least the regular benefits of the local sick funds.

PAR. 2. With the approval of the supervisory authority, they may pay the pecuniary benefit otherwise than weekly, but in no longer intervals than semimonthly.

## ARTICLE 496

Miners sick funds may collect an entrance fee from members who can prove that they have already belonged to another sick fund, only if more than 26 weeks have elapsed between the resignation and admission.

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Code of January 1, 1913

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## ARTICLE 497

An application for exemption from compulsory insurance according to article 173 shall require the consent of the majority of votes both from the group of employers in the directorate and from the group of the insured persons.

## ARTICLE 498

PARAGRAPH 1. Articles 206 and 383 are applicable to the members.

PAR. 2. If the constitution specifies a waiting term for the claim to additional benefits, then members who leave for the purpose of performing their term of service in the Army or Navy may interrupt this waiting term for the duration of the service period, as well as for a maximum of 26 weeks additional. No new entrance fee shall be collected from them in this case.

## ARTICLE 499

PARAGRAPH 1. The provisions of articles 119, 223, paragraphs 2 and 3, relating to transfer, assignment, attachment, and charging up of insurance claims, are applicable to all benefits which the miners' associations or sick funds must pay according to this law or to the State laws.

PAR. 2. The highest administrative authority shall specify which authority is competent for the approval according to article 119, paragraph 2.

## ARTICLE 500

PARAGRAPH 1. Articles 211 to 214, 219 to 222, 224, 313, and 314 are here correspondingly applicable.

PAR. 2. If the place of residence of a sick person belongs to the territory of a miners' sick fund, the latter must grant the preliminary relief, urgent cases excepted.

## ARTICLE 501

PARAGRAPH 1. The representatives of the insured persons in the general meeting (miners' elders) in the directorate of the miners' sick funds, miners' associations, and miners' funds, must be elected by secret ballot. Election according to the principles of proportionate representation is permissible.

PAR. 2. Invalid miners may be elected to the general meeting and to the directorate of a miners' sick fund, even if they pay contributions to the sick fund as voluntary members.

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Code of January 1, 1913

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## ARTICLE 502

PARAGRAPH 1. Articles 368 to 376 are here applicable.

PAR. 2. In other cases, so far as this law does not provide otherwise, the provisions of State laws relating to miners' associations and miners' funds remain unaffected.

## SECTION TEN.—SUBSTITUTE FUNDS

## I. AUTHORIZATION

## ARTICLE 503

PARAGRAPH 1. Mutual insurance associations to which a certificate as a registered aid fund according to article 75a of the sickness insurance law has been granted before April 1, 1909, shall on their application be admitted as substitute funds for the district and class of their members subject to insurance: *Provided*, That they have a permanent membership of more than 1,000 members, and that their constitution meets the requirements of articles 504 to 513.

PAR. 2. On application of such an insurance association the highest administrative authority of its seat may reduce the minimum membership to 250.

## ARTICLE 504

PARAGRAPH 1. The admission of persons subject to insurance may be made dependent on participation in other societies or associations only if the constitution at the time of the establishment of the association contained such a provision applicable to all the members.

PAR. 2. In other respects members shall not be obliged to perform acts or to refrain from actions which do not affect the object of the association.

## ARTICLE 505

PARAGRAPH 1. Persons subject to insurance who belong to the class of persons for whom according to its constitution the association was established shall, with reservation of article 504, paragraph 1, not be denied admission; in particular, admission shall not be made dependent on their age or state of health.

PAR. 2. The association may, however, subject those who apply for admission to a medical examination, and refuse the admission of persons who are sick at the time.

PAR. 3. The association may reject persons subject to insurance who apply for admission if they are in debt to the substitute fund for contributions from a former membership or if they have a claim to benefits from

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Code of January 1, 1913

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some other insurance which are at least equal to the benefits of their sick fund.

#### ARTICLE 506

PARAGRAPH 1. If not later than January 1, 1911, the association has graduated the contributions of persons subject to insurance, according to their age at the time of admission, then it may retain these grades and change them with the approval of its supervisory authority. But the highest grade must not exceed the lowest by more than was the case on the date specified, and at the most by one-half. The association may increase the contributions of persons subject to insurance according to their state of health at the time of admission, but such increase shall not be greater than one-fourth of the regular rate.

PAR. 2. The association shall not graduate its benefits according to the age or state of health of those who join.

#### ARTICLE 507

PARAGRAPH 1. The person subject to insurance shall be granted benefits at least equal to the regular benefits of the sick funds according to the basic wage which is the standard in his sick fund. The association may restrict persons subject to insurance to the lowest class of membership which meets these requirements.

PAR. 2. Benefits for persons subject to insurance may be reduced only to the same extent as in the case of the sick funds. The association must draw up sickness regulations (art. 347, par. 1) for them; the regulations must have the approval of the local insurance office competent for its seat.

PAR. 3. The association may increase the pecuniary benefit by one-fourth of the basic wage (par. 1) to persons subject to insurance who do not make use of the right of article 517, paragraph 1.

#### ARTICLE 508

The association may grant its members and their dependents without restriction as to duration or amount all the benefits which sick funds of their kind are permitted to grant by article 179. The benefits to survivors of deceased members shall not exceed ten times the weekly benefit to which the deceased person was entitled.

#### ARTICLE 509

PARAGRAPH 1. The resources of the association may be used only for the benefits provided by the constitution, for the accumulation of the reserve, for the costs of administration, and for the general purpose of the prevention of sickness.

PAR. 2. It is also permissible to use them for the attendance at meetings which shall serve the legal purposes of the sickness insurance and of the substitute funds.

PAR. 3. The association shall not collect contributions for other purposes from the persons subject to insurance.

PAR. 4. It may only undertake matters which the law relating to registered aid funds (Reichs-Gesetzblatt 1876, p. 125, and 1884, p. 54) permit, or which this book [book two] permits.

#### ARTICLE 510

Only members who are of age and in possession of their civic rights may belong to the directorate or supervisory council.

#### ARTICLE 511

After their admission the association may not exclude members or treat them less favorably in regard to contributions or benefits because they have passed a certain age limit or because their state of health has undergone a change.

#### ARTICLE 512

Members who have belonged to it for two years shall not be excluded because they have resigned from a society or association, or are excluded therefrom. If it excludes a member before the expiration of two years for such a reason, it shall refund him not less than the entrance fee, if he has paid such.

#### ARTICLE 513

The association may permit the resignation of persons subject to insurance only at the close of the calendar quarter, regardless of the fact that they may have changed their employment in the meantime.

#### ARTICLE 514

PARAGRAPH 1. The superior administrative authority of its seat shall decide on the application of an association for authorization to act as a substitute fund. The Imperial Insurance Office shall decide in case its district extends beyond the borders of the federal state.

PAR. 2. If the application is approved, the association receives a certificate to that effect and it shall add to its name the words "substitute fund."

PAR. 3. The authorization may be refused only if the association does not meet the requirements of the provisions of articles 503 to 513. The reasons for refusal shall be stated.

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Code of January 1, 1913

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## ARTICLE 515

PARAGRAPH 1. The certification of the superior administrative authority must be published by the newspaper designated for its official announcements and the certification of the Imperial Insurance Office by the Reichsanzeiger.

PAR. 2. As proof of authorization a printed copy of the constitution of the association may be used and it shall contain the certification, in addition to the year of publication, number, and page number, of the newspaper.

## ARTICLE 516

PARAGRAPH 1. If an authorized association does not meet, or no longer meets the conditions of authorization, and in spite of the request of its supervisory authority does not remedy this defect within the specified time limit which must be not less than six weeks, then the certification shall be revoked.

PAR. 2. It shall also be revoked if the association increases the group of persons subject to insurance who may belong to the association.

PAR. 3. The reasons for revocation shall be communicated. It shall be published in the same manner as the certification.

## II. RELATION TO SICK FUNDS

## ARTICLE 517

PARAGRAPH 1. In the case of persons subject to insurance who are members of a substitute fund, their rights and duties as members of that sick fund to which they belong shall be suspended if they apply therefor; they shall have no claim to benefits of the sick fund and shall neither hold office nor vote.

PAR. 2. Their employers have to pay only their own share of the contribution to the sick fund; the share of the insured person is not paid.

## ARTICLE 518

PARAGRAPH 1. If the class from which the association recruits its members is composed principally of insured persons of the class specified in article 165, paragraph 1, Nos. 3 to 5, or of office employes, brick makers, or other insured persons, in whose occupations a frequent change of employment from one place to another is customary, the Imperial Insurance Office may, on application of this substitute fund, decree, with the right to revoke the decree, that the sick funds shall transmit to the substitute fund four-fifths of the shares of contributions paid to them according to article 517, paragraph 2, by the employers for its members.



PAR. 2. The Federal Council may specify the particulars herewith as well as in regard to the publication of the decree.

#### ARTICLE 519

PARAGRAPH 1. If a person subject to insurance intends to make use of the right of article 517, paragraph 1, he shall make an application to the directorate at the time of admission to the sick fund, or at the latest on the second pay day; he shall communicate to it the name and seat of the substitute fund and prove that he belongs to it.

PAR. 2. On application of a substitute fund the federal council may confer on it the right to make applications in place of the persons subject to insurance.

PAR. 3. The sick fund shall give information to the employers of the person subject to insurance, only in regard to the question whether his rights and duties are suspended but not as to which substitute fund he belongs.

#### ARTICLE 520

PARAGRAPH 1. If the application has not been made at the proper time on admission to the sick fund, then it may be made not earlier than at the beginning of the next calendar quarter; it must be made to the directorate at least one month in advance; the admission to the substitute fund must also be proved to the directorate.

PAR. 2. The same is applicable to members of the sick fund who join only after admission to a substitute fund.

#### ARTICLE 521

PARAGRAPH 1. The substitute fund shall send a notice of the withdrawal of a member subject to insurance who has made use of the right of article 517, paragraph 1, to the directorate of its sick fund or to the common place of registration established for it, not later than at the close of the calendar quarter; it shall also send a notice within a month at the latest of the exclusion of such a member or of his transfer to a class of membership entitled to lower benefits than those specified in article 507, paragraph 1.

PAR. 2. If the sick fund or the place of registration is unknown to the substitute fund, the notification shall be directed to the local insurance office in whose district the member was employed at the last payment of the contribution. This employment and the place where he is staying at that time shall be indicated. The local insurance office shall transmit the notification to the directorate of the proper sick funds.

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Code of January 1, 1913

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## ARTICLE 522

PARAGRAPH 1. The constitution of the substitute fund shall specify which of its administrative bodies or employees shall make the notifications and the applications which have been transferred to the fund according to article 519, paragraph 2.

## ARTICLE 523

If, in the case of a member of a substitute fund, the pecuniary benefit to which he would be entitled in his sick fund is increased so that the pecuniary benefit of the substitute fund for his membership class would no longer meet the requirements of article 507, paragraph 1, then his rights and duties according to article 517, paragraph 1, shall be suspended until the close of the calendar quarter, but for not less than two weeks.

## ARTICLE 524

The obligations of insurance carriers according to article 116, and of sick-fund directorates according to article 344, are also applicable to substitute funds.

## ARTICLE 525

The local insurance office shall decide by judgment procedure in disputes between substitute funds and sick funds over the refund of benefits granted illegally (art. 224, No. 2).

## SECTION ELEVEN.—FINAL PROVISIONS AND PENAL PROVISIONS

## I. FINAL PROVISIONS

## ARTICLE 526

PARAGRAPH 1. A union of communes, in the meaning of this book, is a union whose district forms the district of the fund or embraces it as the next larger union.

PAR. 2. The highest administrative authority may specify in which cases the commune is competent in place of the union of communes: *Provided*, That the district of the fund does not extend beyond that of the commune.

PAR. 3. Where no union of communes exists, the State government shall specify which is competent.

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Code of January 1, 1913

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## ARTICLE 527

PARAGRAPH 1. If a local, or rural sick fund has been created for several communes (independent manor districts, or marks, or march districts),<sup>1</sup> which together do not form a union of communes, they shall be combined according to particular provision of the State government into a union for special purposes (*Zweckverband*).

PAR. 2. The provisions of this book as to unions of communes are also applicable to such unions for special purposes.

## ARTICLE 528

If the district of a fund extends beyond the district of a local insurance office, then the local insurance office of its seat shall be competent for it.

## II. PENAL PROVISIONS

## ARTICLE 529

PARAGRAPH 1. If an insured person violates the sickness regulations or the order of the attending physician, or neglects the notification incumbent on him according to article 190, then the directorate of the fund may impose upon him fines of not more than three times the amount of the daily pecuniary benefit for each case of contravention.

PAR. 2. The directorate of a miner's sick fund, and of a substitute fund, has the same authority as regards a member subject to insurance who violates the sickness regulation or the order of the attending physician.

PAR. 3. On appeal the local insurance office decides finally.

## ARTICLE 530

PARAGRAPH 1. Whoever in violation of his obligation does not register persons subject to insurance (arts. 317, 319, and 468, par. 2), or does not submit the lists of employees engaged in home industries (art. 473), may be fined not to exceed 300 marks [\$71.40], if he acts intentionally, and not to exceed 100 marks [\$23.80] if he acts negligently.

PAR. 2. Whoever violates in other ways the provisions relating to the registration of persons liable to insurance or to the submission of lists or persons engaged in home industries (arts. 317 to 319, art. 468, par. 2, and arts. 473 and 474) may be fined not to exceed 20 marks [\$4.76].

PAR. 3. Whoever in violation of his obligation neglects to submit applications as required by article 519, paragraph 2, and article 522, or to make reports as required by article 521, may be fined not to exceed 20 marks [\$4.76].

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<sup>1</sup>Selbständige Gutsbezirke oder Gemarkungen, ausmärkische Bezirke.

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Code of January 1, 1913

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PAR. 4. The local insurance office shall assess these fines. On appeal the superior insurance office decides finally.

#### ARTICLE 531

PARAGRAPH 1. The fund shall recover contributions which are in arrears independently of the fine.

PAR. 2. It may also require the persons fined to pay from one to five times the contributions which are in arrears. The amount shall be collected in the same manner as communal taxes. This is not applicable to persons engaged in home-working industries who violate article 468, paragraph 2.

PAR. 3. Article 396 is here correspondingly applicable.

#### ARTICLE 532

PARAGRAPH 1. Employers and persons giving the order (art. 486) shall be punished with a fine of not more than 300 marks [\$71.40], or be punished with arrest, unless a severer penalty is provided by other legal provisions if they intentionally do any of the following:

1. Deduct from the employés' earnings larger shares of contributions than this law permits, or make deductions in the case mentioned in article 398;
2. Violate the provisions of article 402.

PAR. 2. The same penalty shall be imposed on employers who act in contravention of the provisions of article 400.

#### ARTICLE 533

PARAGRAPH 1. Employers and persons giving the order (art. 486) shall be punished with confinement in jail if they intentionally keep back from the fund entitled thereto the shares of contributions which they have deducted from their employés or have received from them.

PAR. 2. They may in addition be fined not more than 3,000 marks [\$714] and be sentenced to the loss of their civic rights.

PAR. 3. If there are mitigating circumstances, then a fine only may be imposed.

#### ARTICLE 534

PARAGRAPH 1. The employer may transfer the obligations which this law imposes on him to establishment managers, persons charged with supervision, or other employés of his establishment.

PAR. 2. If such representatives act in contravention of this law, the penalty shall be imposed on them. In addition, the employer is also liable to punishment, if—

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Code of January 1, 1913

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1. The contravention took place with his knowledge;
2. He has not observed the necessary care in the selection and supervision of his representatives; in this case only a pecuniary fine may be imposed on the employer.

PAR. 3. One to five times the contributions which are in arrears (art. 531, par. 2) may also be assessed on the representative and collected from him. Besides the representative the employer is also liable for this amount if he has been fined according to paragraph 2.

#### ARTICLE 535

The penal provisions of article 23, paragraph 2, are applicable to managing officials and employés of the funds and of the federations of funds; they are applicable to the employers in the case of establishment funds and to the persons appointed according to article 362, paragraph 1, if they intentionally commit acts which injure the fund.

#### ARTICLE 536

The same penal provisions (arts. 529 to 535) are applicable—

1. To the members of the directorate, if a stock company, a mutual insurance association, a registered coöperative society, a guild, or other legal person is the employer;
2. To the business manager if a society with limited liability is the employer;
3. To all partners personally liable, as far as they are not excluded from the representation, if any other business corporation is the employer;
4. To the legal representatives of insolvent and partially insolvent employers, as well as to the liquidators of a business corporation, a mutual insurance association, a registered coöperative society, a guild, or other legal person.

### BOOK THREE—ACCIDENT INSURANCE

#### PART ONE

#### INDUSTRIAL ACCIDENT INSURANCE

##### SECTION ONE.—SCOPE OF THE INSURANCE

#### ARTICLE 537

PARAGRAPH 1. Subject to the insurance are—

1. Mines, salt works, ore-treating works, quarries, pits (open digging);
2. Factories, shipyards, metallurgical and metal working plants,

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Code of January 1, 1913

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- pharmacies, and if they are conducted as a business, breweries and tanneries;
3. Yards for the preparation of building materials, establishments executing work in building, decorating, stone cutting, locksmithing, blacksmithing, or plumbing (*Brunnenarbeit*); furthermore stone-breaking establishments as well as building work done by other than regular building establishments;
  4. The chimney-sweeping, window-cleaning, butchering trades, and the operation of bathing establishments;
  5. The entire establishment of the railroad and the postal and telegraph administrations as well as the establishments of the naval and military administrations;
  6. Inland navigation, rafting, flat-boating and ferries, the hauling of ships (towing), inland fishing, fish culture, the operation of ponds and the cutting of ice, if done as a business or administered by the Empire, a State, a commune, a union of communes or other public body, dredging, as well as the keeping of vessels on inland waters;
  7. Establishments engaged in hauling, express, livery, the hiring of riding animals and keeping of stables if carried on as a business, the keeping of vehicles other than water conveyances if driven by mechanical or animal power, as well as the keeping of riding animals;
  8. Elevator, storage, and cellarage establishments if conducted as a business;
  9. The trades of goods packer, goods loader, agent, sorter, weigher, measurer, inspector, stower;
  10. Establishments for the transportation of persons or goods, and timber-felling establishments, if they are connected with a commercial undertaking which extends beyond the scope of a small-scale establishment;
  11. Under the same assumption (number 10 preceding), establishments for the treatment and handling of goods.

PAR. 2. The Imperial Insurance Office decides which commercial undertakings (numbers 10 and 11) are not subject to the accident insurance on the ground that they are small-scale establishments.

#### ARTICLE 538

Those establishments are considered as factories in the meaning of article 537, number 2, which—

1. Work up or work over articles as a business and for this purpose employ regularly at least 10 workmen;

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Code of January 1, 1913

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2. Manufacture or work up as a business, explosives or explosive materials or produce or distribute electrical power;
3. Make use of steam boilers or of machinery moved by mechanical or animal power, provided that such use is not merely temporary;
4. Are placed in the category of factories by the Imperial Insurance Office.

●      **ARTICLE 539**

Other establishments are also subject to the insurance if they are important parts or subsidiary establishments of the establishments described in articles 537 and 538.

**ARTICLE 540**

Article 539 is not applicable—

1. To agricultural establishments which are subsidiary establishments.

The constitution (art. 675) may also place subsidiary establishments of this kind under the industrial accident insurance if the persons employed in them are principally persons from the main establishment. When such a provision comes into force, the subsidiary establishment is withdrawn from insurance in the agricultural accident association. The provision may only be canceled at the end of a fiscal year. Before a provision of the constitution on the membership of an agricultural subsidiary establishment is approved, the agricultural accident associations affected must be heard. If the accident associations do not come to an agreement, the Federal Council decides the matter upon application. The agreement of the agricultural accident association must in any case be secured, if the provision has not yet been in force more than three years;

2. To marine navigation establishments, and other establishments falling under articles 1046 and 1049, which are important parts of the establishments described in articles 537 and 538 and extend beyond the local traffic or are subsidiary establishments.

**ARTICLE 541**

Articles 916, and 918 to 921, regulate what establishments and activities of the kind described in articles 537 and 538 as parts or subsidiary establishments of an agricultural establishment are to enter the agricultural instead of the industrial accident insurance.

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Code of January 1, 1913

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## ARTICLE 542

PARAGRAPH 1. If, of several establishments which an undertaker has in the territory of the same superior insurance office, some are of the kind that belong to the industrial and some to the agricultural accident insurance, and if they do not already belong to the same accident association according to the preceding regulations, then, upon application of the employer, they are to be assigned to one accident association if altogether not more than 10 persons subject to the insurance are regularly employed in the establishments.

PAR. 2. The application is to be made to the superior insurance office, which, after a hearing of the accident associations affected, decides upon the assignment.

PAR. 3. The employer and the accident associations affected may appeal from the decision of the superior insurance office.

PAR. 4. Up to the time that the decision comes into force, the employer may withdraw the application.

PAR. 5. The assignment may be revoked only at the close of a fiscal year and as long as the grounds mentioned in paragraph 1 apply, only upon the application of the employer. If the assignment has not yet been in force for three years since the rendering of the final decision, then the revocation shall also require the consent of the accident associations affected.

## ARTICLE 543

PARAGRAPH 1. The Federal Council may exempt from the insurance establishments having no particular accident risk.

PAR. 2. The Imperial Insurance Office prepares the decision of the Federal Council; in this connection the decision senate must render an opinion.

## ARTICLE 544

PARAGRAPH 1. The following are insured against accident in establishments or activities which are subject to the insurance according to articles 537 to 542 (industrial accidents): *Provided*, That these two groups are employed in these establishments or activities:

1. Workmen, helpers, journeymen, apprentices;
2. Establishment officials whose annual earnings do not exceed 5,000 marks [\$1,190] of income.

PAR. 2. Acts which have been forbidden do not exclude the assumption of an industrial accident.



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Code of January 1, 1913

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## ARTICLE 545

Foremen and technical officials are also to be considered as establishment officials.

## ARTICLE 546

The insurance covers household and similar service to which insured persons, who are principally employed in an establishment or in insured activities, are assigned by the undertaker or his representative.

## ARTICLE 547

By decision of the Federal Council the accident insurance can be extended to specified occupational diseases in industries. The Federal Council is authorized to issue special regulations for the administration thereof.

## ARTICLE 548

The constitution may extend the compulsory insurance—

1. To undertakers of establishments whose annual earnings do not exceed 3,000 marks [\$714], or who regularly employ for compensation either no one or at the most two persons subject to insurance;
2. To persons engaged in home-working industries (art. 162) without regard to the number of persons subject to insurance employed who are the undertakers of an establishment described in articles 537 and 538;
3. To establishment officials whose annual earnings exceed 5,000 marks [\$1,190] of compensation.

## ARTICLE 549

PARAGRAPH 1. The directorate of the accident association may declare exempt from the insurance those undertakers who, according to the constitution, are subject to the compulsory insurance (art. 548, number 1) but are exposed to no special accident risk. The directorate shall revoke the exemption whenever the reasons therefor no longer exist.

PAR. 2. On appeal, the superior insurance office decides finally.

## ARTICLE 550

PARAGRAPH 1. Undertakers (art. 633) as well as pilots on inland waters, who conduct their business for their own account, may insure themselves against the results of industrial accidents if they do not have annual earnings of more than 3,000 marks [\$714], or if they regularly em-

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Code of January 1, 1913

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ploy for compensation either no one, or at the most two persons subject to insurance.

PAR. 2. The constitution may also admit them to self-insurance, if they have annual earnings of more than 3,000 marks [\$714], or regularly employ for compensation at least three persons subject to insurance.

## ARTICLE 551

The provisions of article 548, Nos. 1 and 2, and of article 550, on the insurance of employers, apply also to their wives or husbands engaged in the establishment.

## ARTICLE 552

The constitution may provide under what conditions accidents of the kind described in articles 544 and 546 may be insured against:

1. By the undertaker of the establishment, on behalf of persons who are employed in the establishment, but are not insured according to articles 544, 545, and 548, No. 3;
2. By the undertaker of the establishment, or the directorate of the accident association, on behalf of persons who are not employed in the establishment but who visit the working place of the establishment or move about therein;
3. By the directorate of the accident association, the members of their official bodies, and their employees.

## ARTICLE 553

The constitution may provide that the voluntary insurance shall be out of force if the contribution has not been paid in spite of warning, and that a new application shall remain of no effect until the arrears of contributions have been paid.

## ARTICLE 554

PARAGRAPH 1. Exempt from the insurance are—

1. Army and Navy officers and surgeons to whom the officers' pension law (Reichs-Gesetzblatt, 1906, p. 565) is applicable;
2. Military persons of the lower classes to whom the noncommissioned officers' and privates' (*Mannschaft*) provision law (Reichs-Gesetzblatt, 1906, p. 593) is applicable;
3. The other persons described by article 1 of the accident relief law for officials, etc., of June 18, 1901 (Reichs-Gesetzblatt, p. 211);
4. Officials who have been appointed at a fixed salary and with a claim to retirement pension in the establishments of the admin-

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Code of January 1, 1913

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istration of a federal State, of a union of communes, or of a commune;

5. Other officials of a federal State, of a union of communes, or of a commune if relief for them has been provided according to articles 14 of the above-mentioned accident relief law.

PAR. 2. Building operations outside of a building establishment conducted as a business, as well as the keeping of riding animals or conveyances not conducted as a business (art. 537, Nos. 6 and 7), are considered as establishments in the meaning of the accident relief law.

## SECTION TWO.—BENEFITS OF THE INSURANCE

### ARTICLE 555

The object of the insurance is the compensation specified in the following provisions for the damage arising from bodily injury or death.

### ARTICLE 556

The injured person and his survivors have no claim if they have purposely brought about the accident.

### ARTICLE 557

PARAGRAPH 1. If the injured person has brought the accident upon himself by the performance of an act which according to a verdict of the court is a crime or an intentional misdemeanor, then the compensation for damages may be wholly or partly denied.

PAR. 2. Contravention of mining regulations shall not be considered a misdemeanor in the meaning of the preceding paragraph.

PAR. 3. The pension may be either wholly or partly paid to the injured person's dependents living in the Empire, if in case of his death they would have a claim to a pension. German protectorates are to be included in the Empire in the meaning of this provision.

PAR. 4. The compensation may also be denied if no verdict of a court has been rendered because of the death or the absence or of any other reason connected with the person of the injured party.

### ARTICLE 558

In case of an injury, there is to be granted from the beginning of the fourteenth week after the accident—

1. Medical treatment; it includes physician's services and the providing of medicines, other therapeutical appliances as well as the aids which are requisite to assure the success of the treat-

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Code of January 1, 1913

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ment or to alleviate the results of the injury (crutches, supporting apparatus, and the like);

2. A pension during the continuance of the disablement.

#### ARTICLE 559

The amount of the pension is as follows, as long as the injured person as a result of the accident is—

1. Totally disabled, two-thirds of the annual earnings computed according to articles 563 to 570 (full pension);
2. Partially disabled, that part of the full pension which corresponds to the proportion of the loss of earning power (partial pension).

#### ARTICLE 560

As long as the injured person is, as a result of the accident, so helpless that he can not exist without the services and care of others, the pension is to be correspondingly increased, though not to more than the full amount of his annual earnings.

#### ARTICLE 561

PARAGRAPH 1. If the injured person at the time of the accident was already permanently and totally disabled, then only medical treatment (art. 558, No. 1) is to be granted.

PAR. 2. As long as in consequence of the accident he is so helpless that he can not exist without the services and care of others, a pension not greater than one-half of the full pension is to be granted.

#### ARTICLE 562

As long as the injured person as a result of the accident is unemployed through no fault of his own, the accident association may for a time raise the partial pension to not more than a full pension.

#### ARTICLE 563

PARAGRAPH 1. The pension shall be computed according to the compensation which the injured person had drawn during the last year in the establishment (annual earnings).

PAR. 2. In so far as the annual earnings exceed 1,800 marks [\$428.40], the excess shall be reckoned at only one-third.

#### ARTICLE 564

PARAGRAPH 1. If the injured person had been employed in the establishment a full year before the accident, the annual earnings shall be con-

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Code of January 1, 1913

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sidered as 300 times the average earnings for a full working day, subject to the provisions of article 569.

PAR. 2. If it is shown that it was customary to operate for a greater or a smaller number of working days, then the multiplication shall be made with this number instead of 300.

#### ARTICLE 565

If the injured person has not yet been employed in the establishment a full year before the accident, then the annual earnings shall be computed in such a manner that the number of days on which the injured person was employed in the establishment shall be multiplied by the average earnings for a full working day; for the rest of the customary number of working days of operation of the year there shall be added the average earnings which, during this time, insured persons of the same kind and earning capacity in the establishment or in a neighboring establishment have secured for a full working day.

#### ARTICLE 566

If the computation according to article 565 can not be carried out, then the annual earnings shall be computed by multiplying the customary number of working days of operation in the year with the compensation which the injured person during the employment in the establishment received on an average for a full working day.

#### ARTICLE 567

If the customary number of working days of operation in the year is so small that those employed in the establishment regularly perform work elsewhere for compensation in addition, then in the cases specified in articles 565 and 566, the number of working days necessary to make up the 300 shall be added to the amount computed according to articles 565 or 566, using the local wages for adults over 21 years of age which at the time of the accident have been determined for the place of employment of the injured person (arts. 149 to 152).

#### ARTICLE 568

If the injured person had been employed by the hour, then the average earnings for the full working day may not be placed higher than the average earnings for a workman of the same kind who has been employed during the whole working day.

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Code of January 1, 1913

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## ARTICLE 569

Articles 564 to 568 are to be correspondingly applied if the annual earnings are composed of amounts specified for not less than weekly periods.

## ARTICLE 570

If the annual earnings do not equal 300 times the local wages for adults over 21 years (art. 567), then 300 times this wage shall be considered as the annual earnings.

## ARTICLE 571

In the case of persons who, previous to the accident, were already partially and permanently disabled, that part of the local wages shall be used as a basis which corresponds to the proportion of earning capacity before the accident.

## ARTICLE 572

Articles 563 to 571 apply correspondingly to injured persons who were employed in an insured activity without belonging to an insured establishment.

## ARTICLE 573

PARAGRAPH 1. If the insured person is insured against sickness on the basis of the imperial insurance or in a miners' sick fund, he shall be granted at least the regular sick-fund benefits of medical treatment and pecuniary benefit according to article 179. However, the pecuniary benefit from the beginning of the fifth week after the accident until the expiration of the thirteenth week shall amount to at least two-thirds of the basic wage. This may not be refused, even in the case mentioned in article 192, unless the injured person has brought the accident on himself during the commission of a crime or during an intentional misdemeanor (art. 557 pars. 1 and 2). The corresponding rule applies to the house money.

PAR. 2. If an insured person receives at the same time pecuniary sick benefits from another insurance, then the reduction of the pecuniary benefit described in paragraph 1 shall be made according to article 189.

PAR. 3. For members of substitute funds the basic wage of their sick fund, while for members of miners' sick funds the basic wage as specified in article 180, shall be determinative.

PAR. 4. If the person insured against sickness becomes ill as the result of an accident while in a foreign country, then the provisions of articles 221 and 222 are applicable in a corresponding manner.

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Code of January 1, 1913

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## ARTICLE 574

Those persons are to be considered as insured against sickness in the meaning of articles 573 who:

1. Are exempt from the insurance according to articles 418 and 435, in so far as the sick fund has to make provision for them (art. 422);
2. On account of lack of employment have separated from the sick fund, but still have a claim on the fund (art. 214).

## ARTICLE 575

If in the case of persons subject to the agricultural sickness insurance the pecuniary sick benefit or the house money is not to be paid, or to be paid only in part because according to articles 420, 421, and 425 there are contractual benefits to be paid by the employer, or because according to article 423 the person is in receipt of a pension on the basis of the imperial insurance, then the value of such benefits is to be included in the sick relief specified in article 573 in so far as they are payable during the same time.

## ARTICLE 576

PARAGRAPH 1. Whatever must be granted by the sick funds, the miners' sick funds, or the substitute funds according to articles 573 and 575, in addition to the minimum benefits which must otherwise be provided according to the law or the constitution, must be repaid by the accident association, or in other cases by the undertaker (art. 633), whenever a compensation must be paid to the injured person beyond the thirteenth week. The constitution of the accident association can specify that the latter in all cases must reimburse the additional benefits.

PAR. 2. The same holds true in a corresponding manner if the injured person who is insured against sickness has no claim to sick benefits.

## ARTICLE 577

PARAGRAPH 1. If an injured person belongs to the group of insured persons according to articles 544 and 545, but is not insured against sickness on the basis of the imperial insurance or in a miners' fund, then the undertaker, under reservation of paragraphs 2 and 3, must grant him the sick benefits during the first 13 weeks. For the amount of the benefits and for their reimbursement articles 573 to 576 are applicable. With the consent of the injured person the undertaker can also grant care and maintenance according to article 185, paragraph 1, and for this deduct not more than one-fourth of the pecuniary sick benefit. As the basic wage for this

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Code of January 1, 1913

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purpose, the local wage for the place of employment (arts. 149 to 152) shall be used. These provisions shall apply in the case of establishment officials only if their annual earnings do not exceed 2,500 marks [\$595].

PAR. 2. In the cases mentioned in articles 169, 418, and 435, the employer has to provide the injured person for the first 13 weeks with the benefits specified in paragraph 1. In such case that basic wage shall be used which is determinative for the sick fund. In these benefits those mentioned in articles 169, 418, and 435 shall be included. Anything in excess of this must be repaid to the employer by the accident association or by the undertaker (art. 576). The same holds true in the case mentioned in articles 170 and 171 if the claims arising out of article 169 are provided to the persons mentioned in those articles.

PAR. 3. If a domestic servant is exempt from the insurance because of other relief specified in article 440, paragraph 1, then the provisions of paragraph 2, sentences 1 to 4, apply to him in a corresponding manner, though the carrier providing the other relief takes the place of the employer. The carrier providing the other relief must claim reimbursement for the additional benefits from the undertaker if the accident association is not obliged to make the repayment.

#### ARTICLE 578

The details for the carrying out of articles 573 to 577 are to be specified by the Imperial Insurance Office.

#### ARTICLE 579

PARAGRAPH 1. The accident association may take over either wholly or in part the benefits to be paid by the undertaker. The latter must reimburse the association to the extent to which the injured person could claim sick benefits from him and in so far as the association itself would not be obliged to make repayment. In such case the reimbursement for sick care shall be three-eighths of the basic wage according to which the pecuniary sick benefit of the beneficiary is to be computed.

PAR. 2. This shall be correspondingly applicable if, in the cases mentioned in article 577, paragraphs 2 and 3, the employer or the carrier of other relief takes the place of the undertaker.

#### ARTICLE 580

PARAGRAPH 1. If in the case of injured persons to whom articles 573 to 577 do not apply it is to be feared that they must later be provided with accident compensation, the accident association may inaugurate a course of treatment, even before the end of the thirteenth week after the ac-



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Code of January 1, 1913

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cident, for the purpose of removing or alleviating the results of the injury.

PAR. 2. The accident association can place the injured person in a medical institution; in such case article 597, paragraphs 2 to 4, is applicable.

PAR. 3. With the consent of the injured person the association can grant care and maintenance as specified in article 185, paragraph 1.

PAR. 4. The injured person may claim from the accident association an appropriate recompense for the earnings he loses on account of the course of treatment.

#### ARTICLE 581

PARAGRAPH 1. Within the first 13 weeks after the accident, the accident association may also have a medical examination made of the injured person even if it does not grant a course of treatment, and can also call for information concerning the treatment and the condition of the injured person from the sick fund, the miners' sick fund, the substitute fund, the physician in charge, or in the cases mentioned in article 577, from the undertaker.

PAR. 2. On application of the accident association, the local insurance office may compel the undertaker to provide this information within a specified time on penalty of fines not exceeding 100 marks [\$23.80].

PAR. 3. Appeals from the determination of the fines shall be decided finally by the superior insurance office.

#### ARTICLE 582

PARAGRAPH 1. If the pecuniary sick benefit ceases before the expiration of the 13 weeks, but the disability continues after the payment ceases, then the pension must be granted from the day on which the pecuniary sick benefit ceases.

PAR. 2. The constitution may also permit the payment of the pension even if after the payment of the pecuniary sick benefit ceases, a loss of earning power remains, but will apparently end before the expiration of the 13 weeks.

#### ARTICLE 583

PARAGRAPH 1. If the sick fund, miners' sick fund or substitute fund has improperly stopped the payment of its benefits before the expiration of the 13 weeks, then the claim of the injured person to the pecuniary sick benefit up to the amount of the pension (art. 582) is transferred to the accident association.

PAR. 2. The same rule is applicable in the case of the benefits paid by the undertaker (art. 577).

## Code of January 1, 1913

## ARTICLE 584

If the accident association, during the time it was required according to article 558 to furnish compensation, has not provided benefits for the injured person, and if during this time, the sick fund, the miners' sick fund, or the substitute fund has granted pecuniary sick benefits or care and maintenance in a hospital according to articles 182, 184, and 185, then the injured person shall be considered as having been totally disabled during this time.

## ARTICLE 585

Controversies concerning claims for reimbursement arising out of articles 573 to 577, and article 579, shall be decided by judgment procedure (*Spruchverfahren*).

## ARTICLE 586

PARAGRAPH 1. In fatal cases there must in addition be granted—

1. As a funeral benefit, the fifteenth part of the annual earnings; however, this must not be less than 50 marks [\$11.90]; article 203 is applicable in a corresponding manner.
2. A pension to the survivors from the date of the death; it consists of a fraction of the annual earnings according to the provisions of articles 588 to 595.

PAR. 2. The annual earnings shall be computed in the same manner as in the case of bodily injury; however, article 571 does not apply in this connection.

## ARTICLE 587

If because of an earlier accident this rate of annual earnings is smaller than that received by him previously, then the earlier pension is to be included in the annual earnings; in such case, however, that amount may not be exceeded which as annual earnings was used as the basis of the earlier pension.

## ARTICLE 588

If the deceased leaves a widow or children, the pension shall amount to one-fifth of the annual earnings—

For the widow up to the time of her death or remarriage;

For each child up to the completed fifteenth year of age; for an illegitimate child, however, only in so far as the deceased has provided him with maintenance according to legal obligation.

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Code of January 1, 1913

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## ARTICLE 589

If the widow remarries, she receives three-fifths of the annual earnings as a settlement.

## ARTICLE 590

PARAGRAPH 1. The widow has no claim if the marriage has taken place only after the accident.

PAR. 2. The accident association may, however, under special circumstances, even then grant a widow's pension.

## ARTICLE 591

PARAGRAPH 1. The provisions concerning pensions of children shall apply also for children of a female person who is not a married woman.

PAR. 2. The same holds true for children of a married woman born before marriage, or for her children of an earlier marriage, if they do not have the legal status of lawful children of the surviving husband.

## ARTICLE 592

PARAGRAPH 1. In case a married woman is killed, who on account of the disability of the husband had supported her family either wholly or in part out of her own earnings, for the duration of the need there is to be granted a pension equal to one-fifth of the annual earnings—

To the widower up to the time of his death or remarriage;

To each child up to the completed fifteenth year of age.

PAR. 2. The widower has no claim if the marriage has taken place after the accident.

PAR. 3. If the husband of the deceased person, without legal grounds therefor has absented himself from the household and has not fulfilled his obligations of maintenance toward the children, then the accident association may grant the pension to the latter.

## ARTICLE 593

PARAGRAPH 1. If the deceased has left relatives in the ascending line whom he has supported to an important degree out of his earnings, then for the duration of the need a pension is to be granted to them, which together shall be one-fifth of the annual earnings.

PAR. 2. If there are relatives of different degree in the ascending line, then the pension shall be approved for the parents in preference to the grandparents.

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Code of January 1, 1913

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## ARTICLE 594

If the deceased leaves orphan grandchildren whom he has wholly or partly supported out of his earnings, then for the duration of the need there shall be granted to them, up to the completed fifteenth year of each, a pension equal altogether to one-fifth of the annual earnings.

## ARTICLE 595

PARAGRAPH 1. The pensions of the survivors may not together exceed three-fifths of the annual earnings; in the contrary case they shall be decreased, and in the following manner: In the case of consorts or children in the same degree; relatives of the ascending line have a claim only in so far as consorts or children, and grandchildren only in so far as those named first do not exhaust the highest amount named.

PAR. 2. In case one survivor ceases to have a right to a pension, the pensions of the others are to be increased to the highest permissible amount.

## ARTICLE 596

PARAGRAPH 1. The survivors of a foreigner, if such survivors at the time of the accident do not customarily reside in Germany, have no claim to a pension.

PAR. 2. The Federal Council can exclude from this provision foreign border territories or subjects of such foreign States the legislation of which provides a corresponding relief for the survivors of Germans killed by an industrial accident.

PAR. 3. German protectorates are considered as German territory in the meaning of paragraph 1.

## ARTICLE 597

PARAGRAPH 1. In place of the benefits prescribed in article 558 the accident association may grant free medical treatment and maintenance in a medical institution (medical-institution care).

PAR. 2. If the injured person has a household of his own, or is a member of the household of his family, then his consent thereto is necessary.

PAR. 3. In the case of a minor over 16 years of age his consent is sufficient.

PAR. 4. The consent is not necessary if—

1. The nature of the injury requires treatment or care which is not possible in the family of the injured person;
2. The sickness is infectious;

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Code of January 1, 1913

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3. The injured person has repeatedly acted contrary to the directions of the attending physician;
4. The condition or conduct of the injured person make continuous observation necessary.

PAR. 5. In the cases mentioned in paragraph 4, numbers 1, 2, and 4, the accident association shall, if possible, provide treatment in a medical institution.

#### ARTICLE 598

If the accident association provides treatment in a medical institution after the first 13 weeks, or on account of the cessation of the pecuniary sick benefit before that time, then a pension must be granted to the relatives of the injured person in so far as it would be granted in case of his death (relative's pension). This claim is also possessed by the wife whose marriage with the injured person has taken place after the accident.

#### ARTICLE 599

With the consent of the injured person the accident association may grant care and attendance by sick nurses, nursing sisters, or other nurses (house care—*Hauspflege*), especially when the placing of the injured person in a medical institution is indicated, but may not be carried out, or an important reason exists for leaving the injured person in his household or in his family.

#### ARTICLE 600

PARAGRAPH 1. If the accident association assumes the payment of the benefits of the undertaker according to article 579, then in place of the sick care and of the pecuniary sick benefit, it may provide hospital care and house money according to articles 184, 186, and 577, paragraph 1; with the consent of the injured person the accident association may also grant care according to article 185, paragraph 1, but in such case shall deduct not more than one-fourth of the pecuniary sick benefit.

PAR. 2. The undertaker must reimburse the accident association to the extent to which the injured person could claim sick benefits from him and in so far as the association itself would not be obliged to make repayment. In such case the reimbursement for the sick care shall be three-eighths of the basic wage according to which the pecuniary sick benefit of the beneficiary is to be computed.

PAR. 3. The same holds true in a corresponding way if in the cases mentioned in article 577, paragraphs 2 and 3, the employer or the carrier of other relief takes the place of the undertaker.

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Code of January 1, 1913

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## ARTICLE 601

Controversies concerning claims for reimbursement arising out of article 600 shall be decided in judgment procedure (*Spruchverfahren*).

## ARTICLE 602

The accident association may by its constitution grant special relief to the injured person who is placed in a medical institution (*Heilanstalt*) and to his dependents either by general rules or according to the need of the parties.

## ARTICLE 603

The accident association may at any time inaugurate a new course of treatment if it may be expected that such would increase the earning capacity of the accident pensioner.

## ARTICLE 604

In addition to the injured person, the sick fund, the miners' sick fund, or the substitute fund to which he belongs, may apply for the resumption of the medical treatment.

## ARTICLE 605

PARAGRAPH 1. If the sick funds, the miners' sick funds, the substitute funds, or the carriers of the accident insurance have placed an injured person in an institution possessing adequate arrangements for treatment, then the injured person during the course of treatment may not be placed in another institution without his consent.

PAR. 2. The local insurance office of the place where he is staying may grant the consent instead.

## ARTICLE 606

If the injured person has not complied with a regulation which affects the medical treatment without any legal or other appropriate reasons therefor, and if his earning capacity will thereby be unfavorably influenced, then his compensation may be disallowed for the time being, either wholly or partly, after this result has been pointed out to him.

## ARTICLE 607

PARAGRAPH 1. On application the directorate of the accident association may grant to the person receiving pension maintenance in a home for invalids (*Invalidenhaus*), an orphan asylum (*Waisenhaus*), or a similar institution, in place of the pension.

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Code of January 1, 1913

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PAR. 2. Such institutions are considered as hospitals, homes, and sanatoria, in the meaning of article 11, paragraph 2, and of article 23, paragraph 2, of the law on relief residence (Reichs-Gesetzblatt, 1908, p. 381).

PAR. 3. So placing the receiver of a pension obligates him to a release of his pension for a period of three months, and if he does not protest within one month before the expiration of this period, to a further period of three months.

#### ARTICLE 608

If an important change takes place in the conditions which were of importance in the determination of the compensation, then a new determination may be made.

#### ARTICLE 609

During the first two years after the accident a new determination on account of a change in the condition of the injured person may be undertaken or demanded at any time. If, however, within this time limit a permanent pension has been legally determined, or if this time limit has expired, then a new determination may be undertaken or demanded only in periods of at least one year. These periods are not affected by the inauguration of a new course of treatment. The periods may be shortened by mutual agreement.

#### ARTICLE 610

The decision, or the final decision, which decreases or withdraws the pension will become effective with the expiration of the month following its announcement.

#### ARTICLE 611

The increasing or regranteeing of the pension may be claimed only for the time after the registry of the claim therefor.

#### ARTICLE 612

PARAGRAPH 1. The cost of the medical treatment and funeral benefits are to be paid within one week after their determination, while pensions are to be paid in monthly amounts in advance. If the pension amounts to 60 marks [\$14.28] or less, then it is to be paid in quarterly amounts in advance: *Provided*, That it is not probable that it will cease to be paid before the expiration of the quarter.

PAR. 2. With the consent of the person entitled to the pension the accident association may pay the same at longer intervals of time.

PAR. 3. The pension shall be rounded off in amounts of full 5 pfennigs [1.2 cents] for the month or the quarter.

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Code of January 1, 1913

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## ARTICLE 613

PARAGRAPH 1. The pension shall be paid for the rest of the month in which the death occurred, in which the remarriage occurred, and in which the pension was suspended. In cases where in addition to the part of the month on account of the pension of the injured person there is also a pension of the survivors, then the latter shall have a claim to the higher amount.

PAR. 2. If the pension is to be paid for a longer period of time, the accident association may pay the pension for this period also.

## ARTICLE 614

If the person entitled to compensation has not received it at the time of his death, then the wife or husband, the children, the father, the mother, the brothers and sisters are entitled to it in order: *Provided*, That they have lived with the person entitled to the pension at the time of his death in the same household.

## ARTICLE 615

PARAGRAPH 1. The pension shall be suspended—

1. As long as the beneficiary is serving a prison term of more than one month or has been placed in a workhouse or reformatory.

If he has dependents in Germany who in case of his death would have a claim to a pension, then the pension up to the amount of his claim shall be turned over to them.

2. So long as a person who is a German subject remains in a foreign country and neglects:

To inform the accident association of his whereabouts;

As an injured person, on the demand of the accident association, to present himself from time to time to the competent consul or other German authorities designated by him.

The Imperial Insurance Office shall specify the particulars in regard to communicating and presentation.

If the person entitled to pension proves that he has neglected to make the prescribed communication and presentation without any fault of his own, then the right to the pension shall be resumed again.

3. As long as the foreign beneficiary voluntarily resides in a foreign country;
4. As long as a foreign beneficiary is expelled from the territory of the Empire on account of a condemnation in a criminal process. The same applies to a foreign beneficiary who has been expelled from the territory of one of the federal States on account of a



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Code of January 1, 1913

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condemnation in a penal procedure, so long as he does not stay in another federal State.

PAR. 2. In the cases mentioned in numbers 3 and 4, the Federal Council may suspend the cessation of a pension for foreign border territories, or for the subjects of such foreign States whose legislation guarantees a corresponding relief to Germans and their survivors.

PAR. 3. If the expulsion of a foreigner entitled to a pension (par. 1, No. 4) is not directed by a condemnation, or on account of a condemnation in a penal procedure, then paragraph 1, No. 2, shall be applicable.

PAR. 4. German protectorates shall be regarded as German territory in the meaning of these provisions.

#### ARTICLE 616

If the pension of an injured person amounts to one-fifth of a full pension or less, then the accident association, with his approval and after a hearing by the local insurance office, may settle upon him a capital sum corresponding to the value of his annual pension.

#### ARTICLE 617

PARAGRAPH 1. A foreigner entitled to a pension who gives up his customary abode in Germany, or who resides customarily in a foreign country, can with his consent receive a settlement from the accident association equal to three times the amount of his annual pension, and without his consent may be paid a capital sum corresponding to the value of his annual pension.

PAR. 2. The Federal Council may nullify this provision for foreign border territories.

#### ARTICLE 618

In cases of settlement with a corresponding capital sum (arts. 616 and 617), the Federal Council shall regulate the computation of the value of the capital sums.

#### ARTICLE 619

If on a new investigation the accident association becomes convinced that the benefits were incorrectly disallowed, either wholly or partly, or have been withdrawn or suspended incorrectly, it may determine these anew.

#### ARTICLE 620

The accident association does not need to demand the return of the compensation which it had to pay before a legal decision came into force.

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Code of January 1, 1913

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## ARTICLE 621

With the exception of the cases mentioned in article 119, claims for compensation may be transferred, assigned, and pledged with legal effect, also on account of demands of the sick funds, miners' associations, miners' funds, substitute funds, and insurance institutions which are entitled to reimbursement according to articles 1501, 1522, and 1528. The transfer, assignment, and execution is only permissible to the amount of the legal claims for reimbursement.

## ARTICLE 622

Claims may be reduced only by the following:

- Arrears of contributions;
- Advances made out of the assets of the accident association;
- Compensation which was paid incorrectly;
- Costs of procedure which are to be returned;
- Fines which have been imposed by the directorate of the accident association;
- Claims for reimbursement of the accident association according to articles 903 and 904.

## SECTION THREE.—CARRIERS OF THE INSURANCE

## I. THE ACCIDENT ASSOCIATIONS AND OTHER CARRIERS OF THE INSURANCE

## ARTICLE 623

As carriers of the insurance, the accident associations comprise the undertakers of the insured establishments (art. 633, par. 1).

## ARTICLE 624

The Empire or the federal State is the carrier of the insurance if the establishment is conducted for its account in the two cases mentioned below, which also include building work and activities in connection with the keeping of riding animals or conveyances not managed as a business (art. 537, Nos. 6 and 7). These two cases are—

1. In the case of the administration of the postal service, the telegraph service, the navy, and the army;
2. In the case of the railways.

## ARTICLE 625

PARAGRAPH 1. The Empire of the federal State is the carrier of the insurance if the establishment is conducted for its account in the case of

Code of January 1, 1913

establishments for dredging, inland navigation, rafting, flatboating, and ferrying, unless the establishments, according to article 2, paragraph 2, of the law of May 28, 1885 (Reichs-Gesetzblatt, p. 159), belong to the accident associations created for them.

PAR. 2. The later entrance of such establishments into an accident association, or the rewithdrawal, or the reëntrance, in case the accident association does not agree thereto, is permissible only with the approval of the Federal Council, and in the absence of other agreement only at the close of a fiscal year.

PAR. 3. In case of rewithdrawal the Empire or the federal State must from then on satisfy the claims for compensation which exist against the accident association on account of accidents in the establishment which has withdrawn, and in this connection an appropriate portion of the reserve and of other assets of the accident association must be turned over to the Empire or to the federal State. The latter are then required to assume the payment of an appropriate part of the interest and refunding payments for the floating debt (art. 779).

PAR. 4. The accident association and the Empire or the federal State may by mutual agreement act in variance of the provisions of paragraph 3; in such cases the decision of the general meeting of the accident association is required.

PAR. 5. If controversies arise in regard to distributing the assets between the accident association and the Empire or the federal State, they may settle the question by an arbitration decision; otherwise it shall be decided by the Imperial Insurance Office (decision senate).

#### ARTICLE 626

In so far as the Empire, a federal State, a public union or other corporation, has the sole right through law or treaty to engage in inland navigation on a waterway or a part thereof (towing and the like), these establishments belong to the accident association created for them.

#### ARTICLE 627

PARAGRAPH 1. The Empire or the federal State is the carrier of the insurance for operations other than the building work and activities in connection with the keeping of riding animals or conveyances not conducted as a business according to article 624 (art. 537, Nos. 6 and 7): *Provided*, That these other building operations or activities are conducted for its account. This does not apply, whenever the Empire or the federal State through a declaration of the imperial chancellor or of the highest administrative officials enter into the accident association, which is the proper one

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Code of January 1, 1913

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for building-trades operations or for the undertakers of establishments engaged in hauling, or in inland navigation, as a business. The declaration of entrance shall also specify the date on which the entrance becomes effective.

PAR. 2. The rewithdrawal and the reëntrance is permissible if the accident association does not agree thereto, only with the approval of the Federal Council, and in the absence of other agreement only at the close of a fiscal year.

PAR. 3. In the case of a rewithdrawal, article 625, paragraphs 3 to 5, is applicable in a corresponding manner.

#### ARTICLE 628

PARAGRAPH 1. A commune, a union of communes, or another public corporation is the carrier of the insurance for such building work and activities in connection with the keeping of riding animals or other conveyances not conducted as a business (art. 537, Nos. 6 and 7) which it conducts as an employer in establishments other than railways: *Provided*, That the highest administrative authorities, on application, have declared the corporation able to assume the burden. Otherwise such a corporation shall be insured together with the designated operations and activities according to article 629.

PAR. 2. The highest administrative authorities may unite several communes, unions of communes, or other public corporations into a federation for the common carrying out of the insurance and declare the latter to be capable of carrying the burden.

PAR. 3. A commune, a union of communes, or another public corporation, may through a declaration of its directorate enter into the competent accident association (art. 627, par. 1). The declaration of entrance shall also specify the date on which the entrance becomes effective.

PAR. 4. If such a corporation is declared to be unable to carry the burden, then its rewithdrawal from the accident association and its reëntrance, in the absence of other agreement, is permissible only at the close of a fiscal year. If it is declared capable of carrying the burden, then article 627, paragraph 2, is applicable for its rewithdrawal from the accident association and its reëntrance; for its rewithdrawal article 625, paragraphs 3 to 5, is also correspondingly applicable.

#### ARTICLE 629

PARAGRAPH 1. Building work which other undertakers do not carry out as a business shall be insured at the expense of the undertakers, or of the communes, or of the unions, through special institutions (branch in-

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Code of January 1, 1913

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stitutes) which shall be attached to the accident associations of the building trade employers (arts. 783 to 835). The accident association is the carrier of the branch institute.

PAR. 2. In the same way branch institutes (arts. 836 to 842) shall be attached to the accident associations of the undertakers of establishments engaged in hauling and inland navigation as a business for the insurance of activities connected with the keeping of riding animals or other conveyances not conducted as a business (art. 537, Nos. 6 and 7). The Federal Council can attach the branch institutes or parts of them to other accident associations. In place of the branch institutes or parts of them, the Federal Council may create mutual insurance associations as independent insurance carriers, and in such case regulates their organization. In case the Federal Council herewith alters the status of branch institutes or of mutual insurance associations it shall regulate the transfer of the burden of accidents and of the assets.

## II. COMPOSITION OF THE ACCIDENT ASSOCIATIONS

### ARTICLE 630

PARAGRAPH 1. The accident associations shall be created according to geographical districts; they include all establishments of the branch of industry for which they were created. In the case of accident associations for railways or the establishments designated in article 537, Nos. 6 and 7, this provision may be departed from.

PAR. 2. The Federal Council may approve the uniting of the undertakers of establishments which belong to miners' associations, or to miners' funds, into miners' accident associations.

PAR. 3. Those accident associations which have been created in accordance with earlier accident insurance laws retain their former status under reservation of the changes permitted according to articles 635 to 648.

### ARTICLE 631

PARAGRAPH 1. If the establishment includes important parts of industries of different kinds, it is to be assigned to that accident association to which the principal establishment belongs. The same holds true under reservation of article 540, of subsidiary establishments, and of such insured activities which are portions of the establishment.

PAR. 2. Establishments and operations in inland navigation and rafting are included in the insurance of the principal establishment only if they do not extend beyond local traffic.

PAR. 3. Activities which according to their nature belong to the insurance of a branch institute or a mutual insurance association are to be

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Code of January 1, 1913

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insured in the accident association to which the undertakers engaged in activities of the same kind belong when the latter are more important than the other activities.

#### ARTICLE 632

The provisions of article 542 are applicable in a corresponding manner for several establishments of the same undertaker all of which are subject to the industrial accident insurance and do not otherwise come under article 631, paragraph 1. This does not hold true for establishments engaged in inland navigation and rafting.

#### ARTICLE 633

PARAGRAPH 1. The undertaker of an establishment is the one for whose account the establishment is conducted.

PAR. 2. In other cases the undertaker is—

1. In the case of building work which is not carried out by a building establishment conducted as a business, the one for whose account it is conducted;
2. In the case of the activities connected with the keeping of riding animals or conveyances not conducted as a business (art. 537, Nos. 6 and 7), whoever keeps the riding animal or conveyance.

#### ARTICLE 634

PARAGRAPH 1. An accident association has in those cases to compensate accidents in insured activities in an establishment which is conducted for the account of an undertaker not belonging to it, if an undertaker belonging to it has given the order and has to make payment therefor.

PAR. 2. This applies in a corresponding way for the branch institutes.

### III. CHANGES IN THE STATUS OF THE ACCIDENT ASSOCIATIONS

#### ARTICLE 635

Changes in the status of the accident associations are permissible with the beginning of a fiscal year, according to articles 636 to 648.

#### ARTICLE 636

Several accident associations may unite themselves by a concurrent resolution of the general meetings of the accident associations. The resolution must have the approval of the Federal Council.

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Code of January 1, 1913

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## ARTICLE 637

PARAGRAPH 1. The general meetings of the accident associations affected can resolve that individual branches of industry or geographically limited parts of an accident association shall be transferred to another association. The resolution must receive the approval of the Federal Council.

PAR. 2. The approval can be withheld if the withdrawal would endanger the solvency of one of the accident associations affected.

## ARTICLE 638

If application is made on the basis of a resolution of the accident associations to have several accident associations united, or separate branches of industry or geographically limited parts, separated from the accident association and added to another, then if an accident association affected protests, the Federal Council shall decide the matter upon appeal.

## ARTICLE 639

The general meeting of the accident association decides in the first place upon an application to create a special accident association for separate branches of industry, or geographically limited parts. The Federal Council decides finally.

## ARTICLE 640

The Imperial Insurance Office prepares the decision of the Federal Council; in such cases the decision senate must express an opinion.

## ARTICLE 641

The Federal Council may withhold its approval to the creation of a new accident association if—

1. The number of establishments or of the necessary persons would be too small to guarantee its permanent solvency;
2. The acceptance of establishments in the accident associations is refused, which for the same reasons (No. 1) are not in a position to form a solvent accident association of their own and can not properly be assigned to another accident association.

## ARTICLE 642

If several accident associations combine to form a new accident association, then all their rights and duties are transferred to the latter as soon as the change becomes effective.

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Code of January 1, 1913

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## ARTICLE 643

If parts of an accident association are separated to form another or to be joined to another, then the other accident association from that time on must satisfy the claims for compensation which had grown up against the old accident association on account of accidents in the establishments which have been separated. The same is also applicable if agricultural subsidiary establishments are transferred to an industrial accident association according to the constitution (art. 540, No. 1).

## ARTICLE 644

Accident associations upon which are placed the obligation of compensation have a claim to a corresponding part of the reserve and of the other assets of the accident association released from these obligations. They are required to assume the payment of a corresponding part of the interest and of the amounts necessary for the refunding of the floating debt (art. 779).

## ARTICLE 645

The general meetings of the accident associations affected may act in variance with the provisions of articles 642 to 644 through concurrent resolution.

## ARTICLE 646

If a dispute arises during the negotiations in regard to the division of the assets between the accident associations affected, they may settle the matter by an arbitration decision; otherwise the Imperial Insurance Office (decision senate) shall decide.

## ARTICLE 647

PARAGRAPH 1. If an accident association becomes unable to fulfill its legal obligations, the Federal Council may dissolve the same if the Imperial Insurance Office (decision senate) makes application therefor.

PAR. 2. The branches of industry of a dissolved accident association, shall be apportioned to other accident associations. The latter are to be heard in advance.

PAR. 3. On the dissolution of an accident association its rights and duties are assumed by the Empire.

## ARTICLE 648

If an accident association which is subject to the supervision of a State insurance office (art. 723) is dissolved as insolvent, then its rights and obligations are to be assumed by the federal State.



Code of January 1, 1913

## SECTION FOUR.—ORGANIZATION OF THE ACCIDENT ASSOCIATIONS

## I. MEMBERSHIP AND THE RIGHT TO VOTE

## ARTICLE 649

Each undertaker is a member of an accident association whose establishment belongs to the branches of industry covered by it and in whose territory the establishment has its seat. The Empire, the federal States, communes, union of communes, and other public corporations are members in so far as articles 624 to 628 do not prescribe otherwise.

## ARTICLE 650

Membership begins with the opening of an establishment or with the placing of it under the insurance obligation; for the Empire and the federal States, for communes, unions of communes, and other public corporations, the beginning of the membership is regulated according to articles 625 to 628.

## ARTICLE 651

PARAGRAPH 1. In each establishment the undertaker must make known through a placard—

1. To which accident association and section the establishment belongs;
2. Where the place of business of the directorate of the accident association and of the section is located.

PAR. 2. If an agricultural establishment is placed under the industrial accident insurance according to article 540, number 1, and article 542, the placard must call attention thereto.

## ARTICLE 652

If members or their legal representatives do not possess civic rights, they shall not have the right to vote.

## II. REGISTRATION OF THE ESTABLISHMENTS

## ARTICLE 653

PARAGRAPH 1. Whoever with an establishment becomes a member of an accident association, must within one week report to the local insurance office in whose district the establishment has its seat the following:

1. The kind of the establishment and the object of the establishment;
2. The number of insured persons;
3. The accident association to which the establishment belongs;

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Code of January 1, 1913

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4. If the establishment is first opened after the law comes into force, the date of opening and if the establishment becomes subject to the insurance only after the law enters into force, the day when insurance obligation begins.

PAR. 2. The report is to be sent in duplicate; the receipt thereof will be acknowledged.

PAR. 3. If an establishment has already been reported and when a change in the person only of the undertaker of the establishment has occurred, then a repetition of the report according to paragraph 1 is not required.

## ARTICLE 654

The local insurance office assigns each establishment in its territory concerning which a report has been received, within one week by sending one of the reports to the directorate of the accident association designated therein.

## ARTICLE 655

If in the opinion of the local insurance office the establishment belongs to an accident association other than that designated, it shall notify the directorate of the latter accident association as well as the undertaker and shall transmit the reports to the directorate of the other accident association.

## ARTICLE 656

PARAGRAPH 1. If the report is not sent in or is incomplete, the local insurance office can require the undertaker to give the information within a specified time under penalty of a fine up to 100 marks [\$23.80].

PAR. 2. On appeal against the determination of the fine the superior insurance office decides finally.

PAR. 3. The local insurance office assigns the establishment within one week after the expiration of the specified time limit by furnishing the information itself (art. 653, par. 1).

## III. REGISTER OF ESTABLISHMENTS

## ARTICLE 657

The directorates of the accident associations must keep registers of establishments on the basis of the reports sent to them by the Imperial Insurance Office and of the later assignments (arts. 654 and 656).

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Code of January 1, 1913

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## ARTICLE 658

The members shall be listed in the register of establishments after it has been ascertained that they have joined the proper association.

## ARTICLE 659

PARAGRAPH 1. Membership certificates shall be sent to the members listed in the register of establishments, by the directorate of the accident association. If the accident association is divided into sections, the membership certificate must designate the section to which the undertaker belongs.

PAR. 2. If acceptance in the register is declined, a decision with the grounds therefor must be transmitted to the head of the establishment through the intervention of the local insurance office.

## ARTICLE 660

Within one month after the delivery of the membership certificate or of the decision declining membership, appeal against the acceptance or the disallowance must be made by the undertaker to the superior insurance office. The appeal is to be transmitted to the local insurance office. If in proceedings on the appeal it is shown that although the establishment is subject to the accident insurance it still does not belong to any of the existing accident associations, then the matter is to be laid before the Imperial Insurance Office. The latter shall assign the establishment to that accident association to which according to its nature it is most nearly allied.

## ARTICLE 661

If the undertaker does not make an appeal against a decision declining membership within the proper time, the local insurance office may lay the matter before the Imperial Insurance Office; upon application of the accident association such action must be taken.

## ARTICLE 662

If in the case mentioned in article 655 the directorate of the accident association designated in the notification accepts the membership of the undertaker, then the directorate of this association shall notify the directorate of the other accident association. The latter can within one month after the receipt of the communication make an appeal.

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Code of January 1, 1913

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## ARTICLE 663

Extracts from the register of establishments are to be communicated to the directorates of the sections in regard to the undertakers belonging thereto.

IV. CHANGES IN THE UNDERTAKERS—CHANGES IN THE ESTABLISHMENT  
AND IN ITS MEMBERSHIP IN THE ACCIDENT ASSOCIATION

## ARTICLE 664

Within the time specified in the constitution the undertaker must report changes in the person for whose account the establishment is conducted to the directorate of the accident association for entry in the registry of establishments. He remains liable for the contributions up to the end of the fiscal year during which the change is reported without, however, releasing his successor from the liability.

## ARTICLE 665

The undertaker must report changes in his establishment which are of importance for his membership in the accident association to the directorate within the time specified in the constitution.

## ARTICLE 666

If upon application of the undertaker or if on its own accord the directorate believes it necessary to refer the establishment to another accident association, then it shall refer the establishment to the latter and communicate this fact to the association and through the local insurance office to the undertaker with a statement of the reasons therefor.

## ARTICLE 667

PARAGRAPH 1. The head of the establishment and the directorate of the other accident association may make protest against the assignment to the directorate which has so assigned the establishment; the last-named directorate shall lay the protest before the superior insurance office.

PAR. 2. If protest is not made within the proper time, then the establishment shall be reinscribed in the register and another membership certificate shall be made out for the undertaker.

## ARTICLE 668

If an accident association demands the assignment of an establishment and the undertaker or the accident association to which the establish-

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Code of January 1, 1913

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ment has hitherto belonged objects to the transfer, then the directorate of this accident association shall lay the matter before the superior insurance office for decision.

#### ARTICLE 669

If the undertaker makes claim for the change in the registry of his establishment, then in case of objection on part of both accident associations he may make application for a decision to the superior insurance office.

#### ARTICLE 670

The provisions of articles 666 and 667 for the assignment of an establishment apply correspondingly in regard to its release from membership.

#### ARTICLE 671

PARAGRAPH 1. If the application for the transfer or release of membership has been granted, then the change in the membership in the accident association shall become effective on the date on which the application has first been received by one of the directorates of the accident associations affected. If the establishment has been transferred or released from membership by the action of the officials, then that date shall be used on which the transfer or the release from membership has been communicated to the undertaker.

PAR. 2. The directorates affected and the undertaker may agree upon another date.

#### ARTICLE 672

If the transfer or release from membership is delayed to an important extent because the legal or constitutional provisions have not been observed, then upon application the superior insurance office may decide that the change in the membership of the accident association shall become effective on a date earlier than that specified in article 671, Paragraph 1, however, not earlier than the beginning of the fiscal year during which the claim for contributions has not yet lapsed.

#### ARTICLE 673

PARAGRAPH 1. If single establishments or subsidiary establishments go from one accident association to another, then article 643 applies in regard to the transfer of the accident burden.

PAR. 2. The accident association taking over an establishment has a claim to a corresponding part of the reserve of the accident association released. This part is to be computed according to an average rate which the Imperial Insurance Office shall determine every five years, separately

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Code of January 1, 1913

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for industrial and agricultural associations, according to the amount of the reserves of all the accident associations.

PAR. 3. Articles 645 and 646 are to be applied here.

#### ARTICLE 674

PARAGRAPH 1. The obligation to make reports in case of changes in an establishment which affect the apportionment in the risk tariff (art. 711) and further procedure are to be regulated in the constitution.

PAR. 2. If the committee or the directorate of the accident association has to draw up and change the risk tariff (art. 707), then the general meeting of the accident association may also transfer to this body the regulation of the obligation to give notice in case of these changes in the establishment.

PAR. 3. The undertaker may appeal against the decision which the accident association issues upon the notification of the changes or in acting on its own initiative.

### V. CONSTITUTION

#### ARTICLE 675

The accident associations regulate their internal administration and their order of business through a constitution which the general meeting of the accident association decides upon.

#### ARTICLE 676

PARAGRAPH 1. The preliminary directorate elected by the general meeting for the purpose of establishing the organization shall conduct the general meeting and manage the business of the accident association until the directorate elected on the basis of a valid constitution shall take over the business.

PAR. 2. The preliminary directorate shall consist of a chairman, a secretary, and at least three associates.

#### ARTICLE 677

The constitution must specify—

1. The name, the seat, and the district of the accident association;
2. The composition, rights, and duties of the directorate;
3. The form of the declarations of the decisions of the directorate as well as its signature on behalf of the accident association, the manner of making decisions in the directorate, and its representation as to third parties;

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Code of January 1, 1913

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4. The calling of the general meeting of the accident association and its method of arriving at a decision;
5. The right to vote of the members and the examination of their credentials;
6. The rates for loss of earnings and for traveling expenses which are to be granted to the representatives of the insured persons (art. 21);
7. The representation of the accident association as against the directorate;
8. The procedure to be followed by the administrative bodies of the accident association in rating establishments in classes of the risk tariff;
9. The procedure in cases of changes in the establishment and of a change in the person of the undertaker;
10. The consequences of shutting down an establishment or of a change in the person of the undertaker, especially as to the guaranteeing of his contributions, if he shuts down the establishment;
11. The drawing up, examining, and acceptance of the annual balance sheet;
12. The administrative action relating to the issuance of the regulations containing provisions for accident prevention and for the supervision of the establishments;
13. The procedure in case of the reporting and release from membership of insured undertakers, of pilots and of other persons insured according to article 548, number 3, and article 552, as well as concerning the amount and ascertainment of the annual earnings of undertakers and of pilots;
14. The method of publishing notices;
15. The provisions as to the amendment of the constitution.

#### ARTICLE 678

The constitution may specify—

1. That the general meeting of the accident association shall be composed of delegates;
2. That the accident association shall be divided into local sections;
3. That special district agents shall be appointed as local officials of the accident association.

#### ARTICLE 679

PARAGRAPH 1. If the constitution specifies the above, it must at the same time specify—

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Code of January 1, 1913

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The election of the delegates;

The seat and the district of the sections;

The composition and calling of the general meetings of the sections and the manner of forming decisions;

The composition, rights, and duties of the directorates of the sections, the election, the districts, and the rights and duties of the special officials and their substitutes.

PAR. 2. The general meeting of the accident association may delegate the delimitation of the districts, and the election of the district agents and their substitutes, to the directorate of the accident association or of the section and may delegate the election of the directorates of the sections to the general meetings of the sections.

#### ARTICLE 680

The constitution may empower the directorate of the accident association to impose fines up to 25 marks [\$5.95] upon undertakers and persons holding equal positions according to article 912 who act contrary to their duties as stated in the constitution.

#### ARTICLE 681

The constitution requires the approval of the Imperial Insurance Office. If the approval is to be denied, then the decision senate shall decide the matter; the reasons for the disapproval are to be stated. If the approval is not given, then on appeal the Federal Council shall decide.

#### ARTICLE 682

If the approval has been finally denied, then within a time specified by the Imperial Insurance Office the general meeting of the accident association shall decide upon a new constitution. If no decision is made or if the new constitution is also finally disapproved, then the Imperial Insurance Office shall issue the constitution and direct that the necessary steps for its execution shall be taken at the expense of the accident association.

#### ARTICLE 683

The constitution may be amended only with the approval of the Imperial Insurance Office. If such approval is to be denied, then the decision senate shall decide; the reasons for the disapproval are to be stated. If the approval is denied, then upon appeal the Federal Council shall decide the matter.



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Code of January 1, 1913

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## ARTICLE 684

PARAGRAPH 1. If the constitution has been approved, then the directorate of the accident association shall publish the name and seat of the accident association and the districts of the sections in the Reichsanzeiger.

PAR. 2. The same rule is applicable in the case of amendments.

## VI. ADMINISTRATIVE BODIES OF THE ACCIDENT ASSOCIATION

## ARTICLE 685

The board of directors shall administer the accident association in so far as the law or the constitution do not provide otherwise.

## ARTICLE 686

The following matters remain within the power of the general meeting of the accident association:

1. The election of the members of the directorate;
2. The amendment of the constitution;
3. The examination and acceptance of the annual balance sheet, if the general meeting of the accident association has not appointed a special committee for this purpose;
4. The specification of the amount of the lump sums for loss of time and the rates for travel expenses for the members of the official bodies of the accident association.

## ARTICLE 687

PARAGRAPH 1. Subject to the reservations of articles 13 and 14, whoever belongs to an accident association as a member, or holds a place equal to a member (art. 13, par. 2), may be elected to the directorate or as a district agent of the accident association, or as a delegate in the general meeting of the accident association (art. 678, No. 1).

PAR. 2. Those members of a guild, or of the supervisory council of a stock company, of a copartnership with shares (*Kommanditgesellschaft auf Aktien*,) or of a company with limited liability belonging to an accident association, are eligible as members of the directorate who have been at least for five years the undertaker or the duly authorized manager of an establishment belonging to an accident association.

PAR. 3. If branches of industry of various kinds or various kinds of establishments (such as large, medium, and small establishments) are combined in one accident association, then they shall as far as possible be represented in the directorate. The constitution shall specify the particulars.

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Code of January 1, 1913

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PAR. 4. The constitution of an accident association may provide that the delegates of the insured persons may belong to its directorate, or if the accident association is divided into sections, to the directorates of the sections, and that they shall have the right to vote. The mining accident association may provide in its constitution that the delegates of the insured persons must be elders of a miners' fund. Their election shall be made through the delegates elected according to article 858; article 859 is applicable to regard to their eligibility.

#### ARTICLE 688

The members of the accident associations may have themselves represented in the general meeting of the accident association through other members possessing the right to vote or through a duly authorized manager of their establishment.

#### ARTICLE 689

As long as and in so far as the election of the legally authorized official bodies of the accident association does not take place, or the legally authorized official bodies refuse to perform their duties, the Imperial Insurance Office shall either itself or through agents conduct the business at the cost of the accident association.

### VII. EMPLOYEES OF ASSOCIATIONS

#### ARTICLE 690

PARAGRAPH 1. The general meeting of the accident association shall regulate in appropriate manner the general conditions of appointment and the legal status of the employees of the accident association through service regulations.

PAR. 2. Employees who are employed only on probation, for temporary services, for preparation, or only in a subsidiary manner without compensation, are only subject to the service regulations in so far as the latter provide.

#### ARTICLE 691

The principles stated in articles 692 to 699 shall control in the matter of the service regulations.

#### ARTICLE 692

Appointments are to be made through written contracts.

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Code of January 1, 1913

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## ARTICLE 693

PARAGRAPH 1. The right of the accident association to give notice of dismissal may not place the employee less favorably than he would be in the absence of an agreement under the civil law.

PAR. 2. An employee entitled to notice before dismissal may be discharged without such notice if an important reason exists therefor. In the case of employees who may be dismissed with notice who have been employed longer than 10 years, the notice of dismissal may be given only for an important reason. In the latter case it shall also be considered as an important reason if the employee, because of a change in the status of the accident association or in its business administration, can be spared, not merely temporarily; in such cases the employees with the shorter service term of that employee class in which the change is necessary shall first be given notice of dismissal.

## ARTICLE 694

An appointment for life is permissible in so far as the service regulations provide therefor. The latter must then also regulate the conditions for life appointments as well as the legal status of such employees.

## ARTICLE 695

The service regulations must specify the salaries which are to be paid as a minimum for the separate classes of the employees, with the exception of those specified in article 690, paragraph 2, as well as the basis for an increase in salary. The regulations shall at the same time specify how long the salary shall continue to be paid if the employee, without any fault of his own, is prevented from rendering services.

## ARTICLE 696

Employees who abuse their positions in the service or their official business for the purpose of religious or political activity shall be reprimanded by the directorate, after an opportunity has been given to defend themselves, and in case of repetition shall be dismissed; their dismissal shall require the approval of the Imperial Insurance Office. Religious or political activity outside of their official activities, and the exercise of the right of association in so far as it does not conflict with the laws, shall not be prevented and shall not be considered as a reason either for notice of dismissal or for discharge.

## ARTICLE 697

If the service regulations grant a right to retirement pension or to bene-

## Code of January 1, 1913

fits for survivors, then the regulations shall specify the conditions for the granting thereof.

## ARTICLE 698

PARAGRAPH 1. Appointments may be intrusted only to the business directors for the persons designated in article 690, paragraph 2. The chairman of the directorate must then within a time specified in the service regulations, but of not more than six months, determine as to further employment according to article 690, paragraph 2. For such persons he shall also specify the conditions both of notice of dismissal and of discharge.

PAR. 2. In addition the directorate shall decide in regard to the appointment, the notice of dismissal and discharge, as well as upon the apportionment to one of the classes of employees, the increase in salary, and the granting and disallowance of retirement pension and benefits for survivors.

## ARTICLE 699

The service regulations shall specify the authorities competent for the imposition of penalties and the legal remedies against them. Fines may not be imposed for amounts higher than the service income of one month.

## ARTICLE 700

PARAGRAPH 1. Before formulating the service regulations the directorate shall give the adult employees a hearing.

PAR. 2. The service regulations require the approval of the Imperial Insurance Office.

PAR. 3. If this approval is not given and if within the specified time other service regulations are not drawn up or are not approved, then the Imperial Insurance Office shall issue the service regulations.

PAR. 4. The same holds true for amendments.

## ARTICLE 701

PARAGRAPH 1. Decisions of the directorate of the accident association or of the general meeting of the accident association which conflict with the service regulations must be challenged by the chairmen of the directorate in the form of an appeal to the Imperial Insurance Office; the appeal acts as a stay.

PAR. 2. If a provision of the contract of appointment conflicts with the service regulations it shall be void.

## ARTICLE 702

No provision shall be made granting preference in the filling of vacancies

to persons in possession of a certificate entitling the holder to a civil-service position (soldiers entitled to civil employment).

## ARTICLE 703

PARAGRAPH 1. The directorate may on their own responsibility transfer specified duties to salaried business managers.

PAR. 2. The Imperial Insurance Office shall specify the details in such cases.

## ARTICLE 704

The salaries of the employees shall be determined by the directorate in detail in the budget.

## ARTICLE 705

PARAGRAPH 1. In controversies connected with the conditions of service of employees who are subject to the service regulations, the Imperial Insurance Office (decision senate) shall decide upon appeal if the matter relates to notice of dismissal, discharge, fines of more than 20 marks [\$4.76], or pecuniary claims.

PAR. 2. Pecuniary claims are subject to the following special provisions:

PAR. 3. Appeal to law is permissible. Suit may only be brought within one month after the decision of the Imperial Insurance Office has been made; the time limit is a peremptory time limit in the meaning of article 223, paragraph 3, of the Code of Civil Procedure;

PAR. 4. The regular courts shall be required to follow the decisions of the Imperial Insurance Office on the question whether, the period of notice of dismissal having been observed, a notice of dismissal may be given for an important reason (art. 693, par. 2, sentences 2 and 3);

PAR. 5. In questions concerning the determination of fines, an appeal to the regular courts is not permissible;

PAR. 6. On the basis of valid decisions of the insurance authorities, executions shall be made according to book 8 of the Code of Civil Procedure.

## VIII. FORMATION OF THE RISKS CLASSES

## ARTICLE 706

The general meeting of the accident association must form risk classes according to the degree of risk of accident for the establishments belonging to the accident association in the form of a risk tariff and grade the amount of the contributions thereon.

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Code of January 1, 1913

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## ARTICLE 707

The general meeting may authorize a committee or the directorate to draw up and amend the risk tariff.

## ARTICLE 708

PARAGRAPH 1. The risk tariff must be reexamined after not more than two fiscal years at first, and thereafter at least for every five-year period with respect to the accidents which have occurred.

PAR. 2. If the amendment of the tariff is not intrusted to the directorate, the latter must place before the competent official bodies of the accident association the result of the reexamination, together with a list of the accidents entitled to compensation arranged according to branches of industry. These officials must decide whether the risk tariff is to be retained or is to be amended.

## ARTICLE 709

The risk tariff and every amendment thereto shall require the approval of the Imperial Insurance Office, to which the list of accidents shall be submitted in the case mentioned in article 708.

## ARTICLE 710

If the competent official bodies of the accident association do not draw up the risk tariff within the time specified to them or if the tariff is not approved, then the Imperial Insurance Office itself shall draw up the tariff after a hearing of the official bodies of the accident association.

## ARTICLE 711

PARAGRAPH 1. The accident association assigns the establishments in the risk classes for the duration of the tariff according to provisions of the constitution.

PAR. 2. After the classification of the establishments the accident association may reclassify an establishment for the period of the tariff, if the statements of the undertaker were incorrect or if a change has taken place in the establishment.

PAR. 3. The undertaker has the right of appeal against the classification.

## ARTICLE 712

PARAGRAPH 1. The general meeting of the accident association may impose supplementary charges or grant rebates for the coming tariff

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Code of January 1, 1913

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period or a part thereof to heads of establishments in accordance with the accidents which have occurred in their establishments.

PAR. 2. The employer has the right of appeal against the determination of supplementary charges.

#### IX. DIVISION AND JOINT CARRYING OF THE BURDEN

##### ARTICLE 713

PARAGRAPH 1. The constitution may provide that the sections shall bear the compensation for accidents which occurred in their districts up to three-fourths, and in the case of the mining accident association a proportion in excess thereof.

PAR. 2. The amounts which thereby become a burden to the sections are to be assessed upon their members according to the risk class and the amount of their contribution.

##### ARTICLE 714

PARAGRAPH 1. Accident associations may make an agreement to carry in common either the whole or a part of the burden of compensation.

PAR. 2. In such case it must be specified how the common burden is to be distributed upon the accident associations affected.

##### ARTICLE 715

The agreement shall require the consent of the general meetings of the accident associations affected and the approval of the Imperial Insurance Office. It may become effective only with the beginning of a fiscal year.

##### ARTICLE 716

PARAGRAPH 1. The general meeting of the accident association shall decide how the share of the accident association in the common burden shall be distributed upon the individual members.

PAR. 2. If not otherwise provided, it shall be assessed in the same manner as the amounts paid for compensation which the accident association according to this law is required to pay.

#### X. ADMINISTRATION OF THE ASSETS

##### ARTICLE 717

The Imperial Insurance Office may publish regulations in regard to the safe-keeping of the securities.

## Code of January 1, 1913

## ARTICLE 718

PARAGRAPH 1. The accident association must invest not less than one-fourth of its assets in bonds of the Empire or of the federal States.

PAR. 2. The association may invest not more than one-half of its assets in a manner otherwise than prescribed in articles 26 and 27. For this purpose it shall obtain the approval of the Imperial Insurance Office.

PAR. 3. If an accident association desires to invest more than one-fourth of their assets according to paragraph 2 it must in addition have for this purpose the approval of the Federal Council, or if the association is subject to the State insurance office, it must have the approval of the highest administrative authorities of the federal State.

## ARTICLE 719

PARAGRAPH 1. Such an investment (art. 718, pars. 2 and 3) is permissible only in securities; in other ways only for administrative purposes, only for the avoidance of loss of assets, or for undertakings which—

1. Are for the benefit either exclusively or principally of the persons subject to the insurance;
2. Or in so far as they promote the personal credit of the members of the accident association in the way of coöperation.

PAR. 2. The Imperial Insurance Office shall specify the particulars for the cases mentioned in paragraph 1, No. 2.

## ARTICLE 720

PARAGRAPH 1. Approval is required for—

The purchase of pieces of ground valued at more than 5,000 marks [\$1,190];

The erection of buildings valued at more than 10,000 marks [\$2,380];

The purchase of necessary articles of furniture the total value of which is more than 5,000 marks [\$1,190].

PAR. 2. The approval is not needed for the purchase of pieces of ground on which the accident association has made loans in the case of compulsory sale.

## ARTICLE 721

The accident associations must make reports to the Imperial Insurance Office according to the regulations of the latter, in regard to their business and finances. The Imperial Insurance Office shall each year draw up a report concerning the total financial operations of the preceding fiscal year. This report is to be laid before the Reichstag.



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Code of January 1, 1913

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## SECTION FIVE.—SUPERVISION

## ARTICLE 722

The Imperial Insurance Office shall exercise supervision of the accident associations.

## ARTICLE 723

If a State insurance office is created for a federal State, it shall exercise supervision of the accident associations which do not extend beyond its territory.

## ARTICLE 724

For these accident associations, the State insurance office shall take the place of the Imperial Insurance Office in matters concerning—

Controversies concerning the apportioning of several establishments to one accident association according to articles 542 and 632;

Controversies between an accident association and a public corporation in case of negotiations in regard to the distribution of assets mentioned in article 625, paragraph 5, and the corresponding provisions of article 627, paragraph 3, and of article 628, paragraph 4;

Changes in the status of accident associations (arts. 635 to 648);

Acceptance in the register of establishments (arts. 660 and 661);

Changes in the membership of an establishment in the accident association in the case mentioned in article 673, paragraphs 1 and 3;

Approval and drawing up of the constitution (arts. 681 to 683);

Taking over the business of the accident association (art. 689);

Service regulations for the employees of the accident association (arts. 690 to 702), as well as controversies arising out of their service relations (art. 705);

Risk tariff (arts. 706 to 712);

Joint carrying of the burden of compensation (art. 715);

Administration of the assets of the accident associations in the cases mentioned in articles 717 to 720, but excluding article 719, paragraph 2;

The collection of contributions and premiums (art. 736, pars. 2 and 3), as well as the building up of the reserve (arts. 741 to 747);

Guarantees of one having building work done (art. 773);

Covering of the claims of the Post Office Department (arts. 781 and 782);

Branch institutes and insurance associations (arts. 783 to 842) but excluding the cases mentioned in articles 799 and 839;

Additional institutions of the accident associations (arts. 845 to 847);

## Code of January 1, 1913

Accident prevention and supervision (arts. 848 to 891), but excluding the cases mentioned in article 883;

Reporting the names of the administrative officials (art. 893).

## ARTICLE 725

PARAGRAPH 1. If the matter concerns the cases mentioned herewith, the Imperial Insurance Office decides whether an accident association which is subject to another State insurance office or to the Imperial Insurance Office, is affected. The State insurance office then forwards the documents to the Imperial Insurance Office. These cases are the following:

Controversies relating to the assignment of several establishments to one accident association according to articles 542 and 632;

Changes in the status of the accident associations in the cases mentioned in articles 640 and 646;

Acceptance in the register of establishments (arts. 660 and 661);

Changes in the membership of an establishment in the accident association in the case mentioned in article 673, paragraphs 1 and 3;

Joint carrying of the burden of compensation (art. 715).

PAR. 2. If the matter relates to common additional institutions of several accident associations (art. 847), then the Imperial Insurance Office remains the competent authority for these additional institutions provided that all of the accident associations affected are not subject to the same State insurance office.

## SECTION SIX.—PAYMENT OF THE COMPENSATION—RAISING THE FUNDS

## I. PAYMENTS THROUGH THE POST OFFICE DEPARTMENT

## ARTICLE 726

PARAGRAPH 1. The accident association shall pay the compensation upon notification of the directorate of the accident association through the Post Office Department, and furthermore through that post office in whose district the beneficiary resides.

PAR. 2. The payee shall be notified of the paying office by the directorate.

PAR. 3. If the payee removes his residence, he may make application either to the directorate or to the post office of his old place of residence to have the payments changed to his new place of residence.

## ARTICLE 727

Every person who is entitled to keep a public seal is authorized to give out and to attest the requisite certificates in such payments.

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Code of January 1, 1913

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## ARTICLE 728

The highest postal authorities may collect from each accident association an advance sum. According to the choice of the accident association it shall be transmitted either quarterly or monthly to the office designated by the Post Office Department, and may not be greater than that amount which the accident association will probably have to pay in the current fiscal year.

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ARTICLE 729

The Imperial Insurance Office may specify in what manner payments are to be made to payees who customarily reside in a foreign country.

## ARTICLE 730

The mining accident association may specify through its constitution that miners' associations or miners' funds shall pay the compensation instead of the Post Office Department.

## II. RAISING THE FUNDS

## ARTICLE 731

PARAGRAPH 1. The accident associations must collect the means for their expenditures in the form of members' contributions, which shall cover the needs of the preceding fiscal year.

PAR. 2. In the case of the engineering and excavating association (*Tiefbau-Berufsgenossenschaft*) the contributions must, in addition to other expenditures, cover the capitalized value of the pensions which have become a liability of the accident association in the preceding fiscal year. The principles for the obtaining of the capitalized values are to be determined by the Imperial Insurance Office.

PAR. 3. In the case of the branch institutes for building work fixed premiums as well as contributions are to be collected from the communes and other unions, and in the case of branch institutes and insurance associations for the keeping of riding animals or conveyances fixed premiums are to be collected (arts. 783 to 842).

## ARTICLE 732

PARAGRAPH 1. The members' contributions are to be assessed, first, according to the earnings received by the insured persons in the establishments, though the local wage rate for adults over 21 years of age must be the minimum, and, second, according to the risk tariff.

PAR. 2. If the earnings received during the contribution period ex-

## Code of January 1, 1913

ceed an annual amount of 1,800 marks [\$428.40], then only one-third of the excess shall be included in the computation.

## ARTICLE 733

The constitution may provide that in the assessment of the contributions the earnings actually received shall be used in the computation.

## ARTICLE 734

In the case of establishments which regularly employ not more than five insured persons, the constitution may provide that with the consent of the undertaker a lump sum shall be paid instead of the computed individual earnings, or that uniform contributions shall be paid according to a standard specified by it; the constitution shall also specify the principles to be used in these cases.

## ARTICLE 735

The constitution may provide that in the case of a person giving orders to a home worker, he shall pay the contributions of those employed in home work by the home worker, and if the latter himself is insured according to the constitution, the person giving orders shall also pay for him.

## ARTICLE 736

PARAGRAPH 1. Contributions may not be collected from members nor shall funds from the property of the accident association be employed for purposes other than—

For covering the cost of the compensation and the cost of administration;

For the accumulation of a reserve (arts. 741 to 748);

For the payment of the advances to the post office (art. 728) and for the refunding and interest of the floating debt (art. 779);

For rewards in the case of rescuing injured persons;

For accident prevention;

For securing employment for persons injured by accident;

For the establishment of medical or convalescent institutions;

For the establishment of institutions of the kind specified in article 607.

PAR. 2. If according to article 720 the approval of the Imperial Insurance Office is required for the purposes therein designated, such approval is also required for the collection of contributions for such purposes.

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Code of January 1, 1913

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PAR. 3. These provisions are correspondingly applicable to insurance associations (*Versicherungsgenossenschaften*).

#### ARTICLE 737

PARAGRAPH 1. Newly created accident associations may collect in advance from its members for the first year the funds which are necessary to defray the cost of administration and to pay the post-office advance.

PAR. 2. If the constitution does not provide otherwise, these contributions shall be based on the number of persons subject to the insurance who are employed in the establishments of the members.

#### ARTICLE 738

PARAGRAPH 1. The constitution may provide that the members shall pay advances on the contributions (art. 731).

PAR. 2. The constitution may provide that the directorate shall be entitled to collect advances from—

- (a) Establishments which apparently will exist only temporarily;
- (b) Individual members who have been repeatedly in arrears in the payment of the contributions.

PAR. 3. The advances shall be collected from the individual members according to the amount of those contributions which were assessed upon them for the preceding fiscal year or were paid according to article 734.

PAR. 4. The advances of new members are to be based on the amount which they would have had to pay as members, according to the scope of their establishment, for the cost of the preceding fiscal year.

PAR. 5. The constitution or the general meeting of the accident association shall specify the date of payment; two weeks thereafter the advance must have been paid to the directorate.

#### ARTICLE 739

If the highest postal officials make use of their right to collect advances (art. 728), the constitution may provide that the requisite funds, in so far as they are not available out of the assessment for the preceding fiscal year (art. 749), are to be collected from the members of the current fiscal year through contributions (art. 731).

#### ARTICLE 740

PARAGRAPH 1. The directorate may collect from the undertakers of establishments whose seat is located in a foreign country, contributions of double amount and require them to give security if they carry on in Germany an establishment subject to the insurance for a time only.

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Code of January 1, 1913

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PAR. 2. This provision is correspondingly applicable to branch institutes and insurance associations for the keeping of riding animals or conveyances.

#### ARTICLE 741

The accident associations must accumulate reserves.

#### ARTICLE 742

PARAGRAPH 1. The reserve shall be formed by means of supplementary charges reckoned on the amounts paid out as compensation.

PAR. 2. There shall be collected—

In the first assessment, 300 per cent;

In the second, 200 per cent;

In the third, 150 per cent;

In the fourth, 100 per cent;

In the fifth, 80 per cent;

In the sixth, 60 per cent;

In the seventh to the eleventh each time 10 per cent less.

PAR. 3. The interest shall also be turned into the reserve.

#### ARTICLE 743

PARAGRAPH 1. After the first 11 years, or if this period had already expired at the time of the coming into force of the industrial accident insurance law (Reichs-Gesetzblatt, 1900, p. 585) then from the year 1901 on, the supplementary charge shall be so measured that in the following 21 years the capital of the reserve shall be equal to three times the compensation which is to be paid in the year of the last supplementary charge.

PAR. 2. If an accident association in the 21 years would have to collect unreasonably high supplementary charges, then the Imperial Insurance Office can extend the period not more than 10 years.

PAR. 3. The Imperial Insurance Office specifies the amount of the supplementary charge which the accident association has to collect.

#### ARTICLE 744

PARAGRAPH 1. The interest on the reserve received in the intermediate period (art. 743) may be used to cover the current expenditures. After the expiration of this period those amounts are to be taken from the interest which are necessary to prevent the further increase in the assessments which according to experience would be charged on the average on each 100 marks [\$23.80] of earnings. The remainder of the interest is to be added to the reserve until the reserve is equal to one-half of the capital

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Code of January 1, 1913

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necessary to cover the compensation liabilities at the period in question.

PAR. 2. In special cases the Imperial Insurance Office may specify which part of the interest shall be used for the reduction of the assessments and which part for the addition to the reserve.

PAR. 3. The Imperial Insurance Office shall also specify the manner in which the capitalized value of the liabilities for compensation is to be obtained.

#### ARTICLE 745

The securities in which the reserve is invested are to be reported at their purchase price in determining the assets.

#### ARTICLE 746

With the approval of the Imperial Insurance Office an accident association in case of need can draw on the capital of the reserve and also draw on the interest thereof before the expiration of the first 11 years. The reserve is then to be restored according to regulations of the Imperial Insurance Office.

#### ARTICLE 747

The general meeting of the accident association may upon application of the directorate decide to make additional supplementary charges for the reserve at any time. Such decisions require the approval of the Imperial Insurance Office.

#### ARTICLE 748

PARAGRAPH 1. Articles 742 to 747 are not applicable to the engineering and excavating association. The existing reserve, however, shall be maintained at its present amount; the interest thereon can be used to cover the liabilities of the accident association.

PAR. 2. With the approval of the Imperial Insurance Office the accident association may in case of need draw on the capital of the reserve. It shall then be restored according to provisions of the Imperial Insurance Office.

### III. PROCEDURE IN ASSESSMENTS AND COLLECTIONS

#### ARTICLE 749

PARAGRAPH 1. The directorates of the accident association must assess upon the members the payments which the highest postal authorities prove to have been made (art. 777), together with the other expenditures, according to the standard of apportionment already determined upon.

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Code of January 1, 1913

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In such case the provisions concerning the division and joint carrying of the cost (arts. 713 to 716) are to be considered and the advances already collected to be deducted.

PAR. 2. Article 764 applies to the engineering and excavating association; article 731, paragraph 3, article 763, and articles 799 to 842 are applicable to the branch institutes; article 731, paragraph 3, and article 842, paragraph 2, are applicable to the insurance associations.

#### ARTICLE 750

PARAGRAPH 1. For the purpose of the assessment and the collection of the contributions each member, unless lump sums are used or uniform contributions are to be paid (art. 734) must transmit his wage list within six weeks after the close of the fiscal year to the directorate of the accident association.

PAR. 2. This wage list must contain—

1. The insured persons employed in the establishment during the preceding fiscal year and the earnings received by them;
2. If the wages actually earned are not used as a standard, a computation of the earnings which are to be used in the assessment of the contribution;
3. The risk class in which the establishment is rated.

PAR. 3. The constitution may specify that in place of the individual insured persons and the earnings received by them, the wage list shall contain the number of the insured persons and the total amount of earnings for the whole fiscal year or for shorter periods (summary wage list).

#### ARTICLE 751

The constitution may provide—

That the wage list shall be transmitted either quarterly or semi-annually;

That current wage lists (wage books) shall be kept from which this information can be taken;

That the wage lists (wage books) shall be preserved for three years.

#### ARTICLE 752

In the case of members who do not transmit the wage lists punctually or whose lists are incomplete, the accident association shall itself either prepare the list or complete the same.

#### ARTICLE 753

On the basis of the wage lists, the lump-sum payments and the uniform contributions, the directorate of the accident association shall prepare a



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Code of January 1, 1913

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total list of insured persons who have been employed by the members during the preceding fiscal year, and a statement of the earnings that can be included in the computation which the insured persons have received. On this basis it shall compute the contribution which falls to each member in order to cover the total expenditure.

•                      ARTICLE 754

PARAGRAPH 1. To each member shall be sent an extract from the assessment roll which shall be drawn up for the distribution of the annual expenditures of the accident association, together with the demand, that within two weeks he shall pay the contribution determined upon, from which shall have been deducted the advances paid, in order to avoid compulsory collection and in the case of voluntary insurance in order to avoid exclusion (art. 553), if the constitution permits this step.

PAR. 2. The extract must contain statements which will permit the person required to make a payment to verify the computation of the contribution.

ARTICLE 755

PARAGRAPH 1. After the transmission of the extract, the accident association can then determine the contribution otherwise only if—

The classification of the establishment in the risk classes is changed at a later time;

A change in the establishment occurring in the course of the fiscal year becomes known afterwards;

The wage list proves inaccurate.

PAR. 2. If in such cases or on account of failure to report an establishment the accident association has lost contributions, then the undertaker shall at a later time pay the amount lacking, provided that the claim has not lapsed.

ARTICLE 756

In the case of a new or subsequent determination of the contribution the procedure is the same as in the case of the first determination.

ARTICLE 757

PARAGRAPH 1. Within two weeks the members may make protest against the determination of their contributions to the directorate, but remain obliged to make provisional payment.

PAR. 2. They are not required to make provisional payment if the earnings are already contained in the wage list for another accident association

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Code of January 1, 1913

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and the contributions which are based on these earnings have been paid to this accident association.

#### ARTICLE 758

PARAGRAPH 1. If the directorate does not comply with the protest or does not comply to the extent applied for, then an appeal against its decision is permissible only subject to article 759.

PAR. 2. Appeals shall be based only upon—

Mistakes in computation;

Inadequate consideration of the rebates (art. 712);

Incorrect rates of earnings;

Inaccurate rating in a risk class.

PAR. 3. Protests on account of the last two reasons are not permissible if the directorate has itself drawn up the wage list or completed the same on account of the delay of the undertaker.

#### ARTICLE 759

If claims are based on the reasons stated in article 757, paragraph 2, and the accident association declines to recognize them as well founded, it must place the matter before the superior insurance office. The latter shall decide to which accident association the earnings are to be reported and suspends a divergent determination of the contributions even if such determination has already become effective. An appeal against the decision of the superior insurance office effects a stay.

#### ARTICLE 760

PARAGRAPH 1. If the contribution is reduced upon the appealing of a claim or upon protest, then the amount lost is to be included in the assessment for the succeeding fiscal year.

PAR. 2. Excessive payments are to be returned or to be deducted from the contribution for the succeeding fiscal year.

#### ARTICLE 761

If it develops later that a contribution paid without a protest has been collected either wholly or partly without right, then the provisions of articles 757 to 760 are correspondingly applicable.

#### ARTICLE 762

Uncollectible contributions shall be charged to the whole membership. They shall be covered for the time being out of the available funds of the

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Code of January 1, 1913

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accident association, or if necessary, out of the reserve, and shall be considered in the assessment of the succeeding fiscal year.

#### ARTICLE 7

In the case of accident associations to which a branch institute is attached the directorate of the accident association determines which part of the payments called for by the highest postal authorities is to be paid by the accident association and which part is to be paid by the branch institute.

#### ARTICLE 764

PARAGRAPH 1. The engineering and excavating association shall pay that part which falls upon the accident association itself from its available funds.

PAR. 2. At the same time it must compute according to article 731, paragraph 2, the capitalized value of the burdens which have arisen for the association in the preceding fiscal year and collect the same from its members, together with the other expenditures according to the standard of apportionment already determined upon. In such case the provisions concerning the division and joint carrying of burdens, articles 713 to 716, are to be considered and the advances already collected to be deducted.

PAR. 3. In other matters articles 750 to 763 are applicable.

#### ARTICLE 765

PARAGRAPH 1. If the undertaker of a building operation conducted as a business is in arrears with the payment of contributions and the execution procedure shows that he is bankrupt, then the local insurance office on application of the directorate of the accident association may order, with the right to revoke the same, that the person for whose account the building is done as well as subcontractors are in so far liable for the contributions during one year after their final determination, as they have arisen after the issuance of the order. For such cases the constitution may specify the particulars in regard to the keeping of wage lists to determine the amount of wages for which the person on whose account the building is being done or the subcontractor is liable.

PAR. 2. The liability of subcontractors takes precedence of that of the person for whose account the building work is done.

#### ARTICLE 766

PARAGRAPH 1. An order of this kind must clearly designate the undertaker to whom it applies, giving his name, residence, and business estab-

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Code of January 1, 1913

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lishment. The order shall be communicated not only to him but also to the police authorities, both of his residence and of the seat of his establishment if the latter is in a separate place.

PAR. 2. If the employer changes his residence or the seat of his establishment then the police officials shall notify the authorities who are competent for the new place of residence or seat of the establishment.

PAR. 3. The police authorities must, on request, give the parties affected information concerning the order.

#### ARTICLE 767

PARAGRAPH 1. The undertaker must without delay give notice in writing concerning the order to the person on whose account the work is done. If he takes over a contract for building work then he must give notice thereof in advance. Subcontractors must without delay give information concerning the notice to the person giving the order.

PAR. 2. Whoever acts contrary to these provisions shall be punished with confinement in jail up to one year; in addition a fine up to 3,000 marks [\$714] may be imposed. If he has acted negligently he shall be punished with a fine up to 100 marks [\$23.80]. The penalty is only imposed if the person giving the order suffers damage as a result of the contravention.

#### ARTICLE 768

The local insurance office shall suspend the order whenever it has been proved to it through certificate of the directorate that the undertaker is no longer in the debt of the accident association.

#### ARTICLE 769

The superior insurance office decides finally upon appeal against—

Decrees of the local insurance office;

Refusals to issue such decrees;

Decisions of the local insurance office on the cancellation of the decree.

#### ARTICLE 770

In controversies between the accident association and the person on whose account the building work is done or the subcontractors in regard to the liability in such cases (art. 765) the superior insurance office (decision chamber) shall decide; appeal to the regular courts is not permitted.

#### ARTICLE 771

Articles 765 to 770 are correspondingly applicable for establishments conducted as a business engaged in hauling, inland navigation, and inland

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Code of January 1, 1913

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fishing. In such cases the proprietor of the apparatus used in the business takes the place of the person on whose account the building work is done and of the person giving the order. In case there are several proprietors they are liable as collective debtors.

#### ARTICLE 772

PARAGRAPH 1. The highest administrative authorities of the federal State may specify that before the beginning of the building work the persons on whose account the work is done shall furnish guaranties to the building accident association for the payment of the contributions or the premiums.

PAR. 2. They shall also specify at the same time the communes and the building operations to which this provision is applicable.

PAR. 3. For such building operations the building permit shall be issued only if the accident association certifies that the guaranty has been provided.

#### ARTICLE 773

The accident association shall determine the kind and the amount of the guaranty; the amount is to be proportioned according to the probable wage payments for the insured building workers. The Imperial Insurance Office shall issue general regulations.

#### ARTICLE 774

The person for whose account the building work is done may apply for the return of the guaranties from the accident association whenever the building work is carried out by building contractors for whom he is not liable (art. 765).

#### ARTICLE 775

The highest administrative authorities may withdraw their regulations (art. 772).

#### ARTICLE 776

In controversies between the accident associations and persons for whom building work is done in the cases mentioned in articles 772 to 775, the superior insurance office shall decide; appeal to the regular courts is not permissible.

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Code of January 1, 1913

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## IV. TRANSFERRING AMOUNTS TO THE POST OFFICE DEPARTMENT

## ARTICLE 777

PARAGRAPH 1. Within eight weeks after the end of each fiscal year the highest postal authorities shall report to the directorates of the accident associations the payments made on their account and shall designate the post offices to which these amounts are to be refunded.

PAR. 2. After acknowledgement by the directorates of the accident associations of the amounts demanded, the highest postal authorities shall notify the accounting bureau of the Imperial Insurance Office of the amounts which have been paid in the preceding fiscal year for each accident association.

PAR. 3. The accounting bureau balances the actual amounts which are to be refunded to the Post Office Department.

## ARTICLE 778

If an accident association does not have to pay an advance to the Post Office Department, then the directorate of the accident association shall transmit the amounts which it has to pay to the Post Office Department within three months after the receipt of the demand to the offices designated therein.

## ARTICLE 779

Payments for compensation which the Post Office Department made in the year 1909 for an accident association are to be treated as the floating debt of the latter, and must have  $3\frac{1}{2}$  per cent interest paid thereon, and are to be refunded at the rate of  $3\frac{1}{2}$  per cent, together with the interest saved. The Empire shall defray two-fifths of these amounts of interest and refunding, while the accident associations have to transmit three-fifths to the Post Office Department in July of each year, together with the partial amounts of the postal advance then due.

## ARTICLE 780

PARAGRAPH 1. The size of the postal advance and the amount to be paid according to article 779 shall be determined for each accident association by the accounting bureau of the Imperial Insurance Office, and a statement thereof shall be communicated to the accident associations and to the highest postal authorities.

PAR. 2. For the computation of the postal advance the highest postal authorities communicate to the accounting bureau the amount of the payments in the preceding fiscal year which have been authorized by the directorates of the accident associations. Until the amount of the new postal

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Code of January 1, 1913

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advance has been determined the partial amounts shall continue to be paid in the same amounts as heretofore. These amounts shall be deducted when the new advance has been determined upon.

#### ARTICLE 781

If the claims of the Post Office Department are not paid punctually by the accident associations, then the Imperial Insurance Office, upon application of the Post Office Department, shall institute proceedings for compulsory collection.

#### ARTICLE 782

In order to cover the claims of the Post Office Department the Imperial Insurance Office shall first make use of the available assets in the treasury of the accident association. In so far as these assets are not sufficient, proceedings for compulsory collection against the members of the accident association shall be instituted and continued until the arrears are covered.

### SECTION SEVEN—BRANCH INSTITUTES

#### I. BRANCH INSTITUTES FOR THE BUILDING TRADES

##### *1. Establishment, scope, and organization*

#### ARTICLE 783

PARAGRAPH 1. Those persons shall be insured in the branch institutes attached to an accident association of persons carrying on building work, who are employed in such work by the undertaker carrying on building work otherwise than as a business in the district of the accident association (art. 633, par. 2, No. 1).

PAR. 2. The same shall be applicable in the case of self-insured undertakers engaged in such building work.

#### ARTICLE 784

The branch institutes may not undertake other kinds of insurance.

#### ARTICLE 785

In addition to the building work for which they have been established, the branch institutes of the building trades accident associations may have transferred to them building work on railways, canals, roads, streams, dikes, and other building operations in their district if an undertaker engaged in building work not conducted as a business (art. 633, par. 2, No. 1) executes such work and if not more than six working days are actually covered by each separate piece of work.

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Code of January 1, 1913

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## ARTICLE 786

The administrative bodies of the accident association shall administer the branch institute if the constitution of the latter does not provide otherwise (art. 794).

## ARTICLE 787

PARAGRAPH 1. The income and expenditures of the branch institute are to be accounted for separately, and the assets are also to be kept separately.

PAR. 2. A special reserve must be accumulated for the branch institute. It may not be used for the purposes of the accident association.

## ARTICLE 788

PARAGRAPH 1. The rest of the property which is intended for the branch institute may be used for the accident association only with the approval of the Imperial Insurance Office.

PAR. 2. The approval for this purpose may only be granted if the part of the property which remains in the branch institute will probably be sufficient to cover permanently the liabilities already outstanding against the branch institute.

## ARTICLE 789

In so far as it is necessary the accident association must advance out of its own reserve the funds for the business operations of the branch institute.

## ARTICLE 790

PARAGRAPH 1. The branch institute must collect for the costs of administration such sums as are actually required for its separate administration.

PAR. 2. With the approval of the Imperial Insurance Office, a lump sum may in addition be imposed on it as its share of the joint costs of administration.

## ARTICLE 791

The branch institute must share in the advance which the accident association has to make to the Post Office Department (art. 728) according to the proportion of the compensation payments which the Post Office Department in the preceding fiscal year has paid out for the accident association and for the branch institute.



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Code of January 1, 1913

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## ARTICLE 792

PARAGRAPH 1. The general meeting of the accident association must establish for the branch institute a constitution of its own.

PAR. 2. In the discussions on this subject a representative of the Imperial Insurance Office must be present and, upon his demand, must be heard at any time.

## ♦ ARTICLE 793

The constitution of the branch institute must contain provisions concerning—

1. The obligation to give notice on the part of the undertakers designated in article 633, paragraph 2, No. 1, who wish to insure themselves, as well as the amount and the computation of the annual earnings of these undertakers;
2. Delimitation of the rights of the directorate and of the general meeting of the accident association in the administration of the branch institute.
3. Accumulation of the reserve;
4. Drawing up, examining, and accepting of the annual balance sheet;
5. Publication of the annual accounts;
6. Amending the constitution of the branch institute.

## ARTICLE 794

PARAGRAPH 1. The constitution of the branch institute may specify that it shall be administered through separate administrative bodies.

PAR. 2. In such case it shall also specify the seat of these administrative bodies, their composition, their districts, and the scope of their rights.

## ARTICLE 795

The general meeting of the accident association may transfer to the directorate of the accident association the delimitation of the districts of the separate administrative bodies and the election of their members.

## ARTICLE 796

The constitution of the branch institute and its amendments require the approval of the Imperial Insurance Office. If the approval shall be refused, the decision senate shall decide the matter; the reasons for the refusal are to be communicated. If the approval has been refused, then on appeal the Federal Council shall decide.

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Code of January 1, 1913

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## ARTICLE 797

The directorate of the accident association must publish the districts and the composition of the separate administrative bodies in the *Reichsanzeiger*.

## ARTICLE 798

The following building operations shall be insured in a branch institute:

1. Those operations in which the separate operations actually consume more than six working days (longer building work) to be insured at the expense of the undertaker (art. 633, par. 2, No. 1), with the use of fixed premiums according to the premium tariff (arts. 799 to 824);
2. Those operations in which the separate operations consume not more than six working days (short building work), to be insured at the expense of the communes or of the unions designated in articles 828 to 830 whose district is covered by the accident association; the payments therefor shall be made in the form of contributions which shall annually be assessed upon these communes or unions according to the expenditure of the preceding fiscal year.

*2. Insurance at the expense of the undertakers—Premiums*

## ARTICLE 799

PARAGRAPH 1. For each month and not later than three days after the expiration thereof the undertakers of longer building operations must submit a report to the officials designated by the highest administrative authorities in whose district the building work is carried out concerning the following:

1. The number of working days on which operations were conducted;
2. The payments made to the insured persons therefor.

PAR. 2. The Imperial Insurance Office shall prescribe the form of this report.

## ARTICLE 800

PARAGRAPH 1. If this report is not sent in or is incomplete, the authorities shall make it out or complete it according to their own knowledge of the conditions.

PAR. 2. For this purpose they may require those subject to this provision to give the information within a specified time under penalty of a fine up to 100 marks [\$23.80].

Code of January 1, 1913

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## ARTICLE 801

PARAGRAPH 1. The authorities must transmit the reports within two weeks after the expiration of the quarter of the calendar year through the channels of the local insurance office to the directorate of the accident association or to the administrative body of the accident association designated by the latter.

PAR. 2. In this connection the authorities (art. 799) must certify that nothing is known to them concerning the execution of other building work in their district concerning which reports should be made.

## ARTICLE 802

The tariff of premiums must show what unit rate must be paid in premiums for each one-half mark [11.9 cents] of computable wages or fraction thereof.

## ARTICLE 803

If the accident association graduates the contributions in the risk tariff according to the class of building work, then the same proportion must also be used for the unit rates of the premiums.

## ARTICLE 804

PARAGRAPH 1. The Imperial Insurance Office determines in advance the tariff of premiums at least every five years for each accident association after hearing the directorate thereof.

PAR. 2. The following factors shall be used as the basis for this purpose:

The capitalized value of the benefits which a branch will probably have to pay on account of accidents in connection with longer building operations, based on an annual average;

The supplementary charges for the creation of the reserve;

A lump sum for the costs of administration of the branch institute which are to be computed according to the annual average of the preceding tariff period after deducting the share for shorter building operations (art. 832). The Imperial Insurance Office shall specify the details in this connection.

PAR. 3. In this connection the interest on the reserve shall be deducted, provided that according to the constitution of the branch institute the interest does not accrue to the institute itself.

## ARTICLE 805

The Imperial Insurance Office shall publish the tariff of premiums in the Reichsanzeiger and in the papers which are designated for official

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Code of January 1, 1913

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announcements of the highest or superior administrative authorities in whose district the tariff shall be in force.

## ARTICLE 806

The tariff shall come into force not earlier than two weeks after its publication.

## ARTICLE 807

After each quarter of the calendar year the directorate of the accident association shall compute on the basis of the tariff of premiums and the reports, the premiums to be paid by each undertaker and shall draw up the assessment roll.

## ARTICLE 808

If the earnings of the insured persons per day of building work are lower than the local wage rate specified for adults in the place of employment, then the premiums shall be computed according to the latter.

## ARTICLE 809

Extracts from the assessment roll are to be forwarded to the communes with the request that they shall collect the premiums from the undertakers in their district and within one month transmit the same to the competent administrative body of the accident association after deduction of the postal fee.

## ARTICLE 810

PARAGRAPH 1. The accident association must grant a fee to the communes for the collection of the premiums, and the amount of this fee shall be determined by the highest administrative authorities acting in agreement with the Imperial Insurance Office.

PAR. 2. No fee shall be granted for a commune's own building operations.

## ARTICLE 811

For those premiums which the communes can not prove are actually lost or are impossible of collection by compulsory execution, the communes are liable and must forward them in advance.

## ARTICLE 812

PARAGRAPH 1. The extract from the assessment roll must contain statements which will enable the person required to pay the premiums to verify the computation thereof.

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Code of January 1, 1913

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PAR. 2. If it is afterward shown that the report of earnings was incorrect then the same regulations shall be applicable for the premiums as in the case of contributions due the accident association (arts. 756 and 757).

#### ARTICLE 813

PARAGRAPH 1. The communal authority shall make the extract available for inspection to the persons affected, for two weeks, and shall make known the beginning of the period in the manner customary in the locality.

PAR. 2. They may also forward the extract to the persons affected instead of leaving it open for inspection.

#### ARTICLE 814

The persons required to make payments may make protest against the computation of the premiums to the directorate of the accident association or to the other competent administrative body (art. 794) within two weeks after the expiration of the period stated in article 813, paragraph 1, or after the delivery thereof; the person required to make payment, however, is obliged to pay the same for the time being. In such cases article 757, paragraph 2, and article 759, are correspondingly applicable.

#### ARTICLE 815

PARAGRAPH 1. Subject to article 814, sentence 2, the protest may only be based upon the following:

Mistakes in computation.

Incorrect statement of wages.

Incorrect use of the tariff of premiums.

The assertion that no obligation for the payment of premiums exists.

PAR. 2. The protest may not be based upon incorrect statement of earnings if the authority has itself drawn up the same or completed it because of the failure of the person obligated to make such report.

#### ARTICLE 816

Against the decision issued by the superior insurance office upon appeal, further appeal is permissible only if the appellant shows that he is not obligated to make payments of premiums.

#### ARTICLE 817

If it later develops that an amount paid without protest was collected either wholly or in part incorrectly, then articles 814 to 816 shall be correspondingly applicable.

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Code of January 1, 1913

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## ARTICLE 818

Premiums which may not be collected are, in case of need, to be covered out of the reserve of the branch institute and are to be considered in determining the next tariff of premiums.

## ARTICLE 819

PARAGRAPH 1. The owner of a building is liable for a period of one year for the premiums and other payments of bankrupt undertakers after the obligation has been finally determined.

PAR. 2. The liability of the subcontractors takes precedence of that of the building owner.

## ARTICLE 820

In case the building owner has given security to the accident association according to official regulations of the State authorities (art. 772), then the association is also liable for the premiums and other payments which the building owner must pay according to article 798, number 1, as an undertaker, or must pay according to article 819 on account of bankrupt undertakers.

## ARTICLE 821

If controversies arise between the accident association (branch institute) and building owners or subcontractors in regard to the liability, then the superior insurance office (decision chamber) shall decide; appeal to the regular courts is not permissible.

## ARTICLE 822

The accident association may not demand on behalf of the branch institute any payments from the undertakers except premiums, fines, and costs, which are to be collected in accordance with this law.

## ARTICLE 823

PARAGRAPH 1. If communes, unions of communes, public corporations, and other building owners regularly carry out building operations without making use of other undertakers, then upon their application a lump sum based on the average annual number of working days can be determined upon in place of the earnings according to which premiums are to be computed.

PAR. 2. At the same time the date when the premiums are to be paid must be determined.

PAR. 3. In such cases the provisions concerning monthly reports

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Code of January 1, 1913

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(arts. 799 to 801) and the quarterly computation and the collection of the premiums (arts. 807 to 811) are not applicable.

#### ARTICLE 824

Whenever the share of the branch institute in the amounts which are to be paid to the Post Office Department arise from accident caused by longer building operations, the funds for the replacement thereof shall be taken from the available cash in premiums.

### *3. Insurance at the cost of communes*

#### ARTICLE 825

PARAGRAPH 1. The funds for covering amounts paid for compensation and costs of administration which accrued to a branch institute on account of accidents in short building operations shall be raised by annual assessment upon the communes in proportion to the population in the districts included in the accident association.

PAR. 2. If the branch institute has participated in the advance of the accident association to the Post Office Department, then on this account an advance may be assessed upon the communes equal in amount to the contributions of the preceding fiscal year.

PAR. 3. Beginning with the fiscal year which follows the last census, the number of inhabitants officially determined by it shall be used as a basis.

#### ARTICLE 826

An extract from the assessment roll is to be forwarded to the communes with a request for the payment of the amount determined upon within two weeks under penalty of compulsory collection.

#### ARTICLE 827

PARAGRAPH 1. The extract must contain statements which will enable those obligated to make the payment to verify the computation.

PAR. 2. Protests and appeals are subject to the same provisions as in the case of the accident association (art. 757, par. 1, arts. 758, 760, and 761); however, protests are permissible only if they are based upon mistakes in computation or upon errors in the statement of the population.

#### ARTICLE 828

PARAGRAPH 1. The highest administrative authority may decree that unions of communes may take the place of the communes or in specified

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Code of January 1, 1913

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districts several communes may jointly assume the costs which accrue to them on account of the accident insurance with the branch institute.

PAR. 2. This authority shall specify at the same time how such unions shall be represented and administered and shall specify the principles upon which the joint cost is to be apportioned to the individual communes.

## ARTICLE 829

The highest administrative authority may in addition provide that administrative districts shall take the place of the communes in the assessment and in such case how the amount assessed shall be apportioned to the individual communes.

## ARTICLE 830

PARAGRAPH 1. In so far as the highest administrative authority has not issued such regulations the communes may unite themselves on their own initiative for taking over the costs which accrue to them on account of accidents in short building operations.

PAR. 2. They shall at the same time specify how the union is to be represented and administered. The union must have the approval of the highest administrative authority.

## ARTICLE 831

The decrees and the agreements of these unions (arts. 828 to 830) are to be communicated to the accident associations affected and to the Imperial Insurance Office.

## ARTICLE 832

The amount of the costs of administration which are to be assessed upon the communes and the unions shall be determined in a corresponding manner as in the case of insurance at the cost of the undertaker (art. 804).

## ARTICLE 833

Within the individual communes or unions of communes the costs arising out of the insurance of short building operations shall be collected in the same way as communal taxes.

## ARTICLE 834

PARAGRAPH 1. The State laws or legal enactments of the individual communes or of a union of communes can specify another standard of apportionment and especially specify that the owners of land or buildings shall bear the cost.



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Code of January 1, 1913

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PAR. 2. Legal provisions of this kind shall require the approval of the superior administrative authority.

#### ARTICLE 835

The communes or other unions have no claim to the reserve of the branch institute on account of the costs which accrue to them through the insurance of short building operations.

### II. BRANCH INSTITUTES FOR THE KEEPING OF RIDING ANIMALS AND CONVEYANCES

#### ARTICLE 836

PARAGRAPH 1. Those persons shall be insured in the branch institute which is attached to an accident association of undertakers of establishments engaged in hauling or inland navigation as a business who are employed in the district of the accident association in establishments for the keeping of riding animals or conveyances not conducted as a business (art. 537, Nos. 6 and 7).

PAR. 2. The same rule applies in the case of self-insured undertakers in such activities.

PAR. 3. In the case of conveyances on water these activities shall be insured in the branch institute of the accident associations for inland navigation; in other cases in the branch institute of the accident association for hauling establishments conducted as a business: *Provided*, That the Federal Council does not enact other provisions in accordance with article 629, paragraph 2.

#### ARTICLE 837

PARAGRAPH 1. The general meeting of the accident association may provide that instead of one several branch institutes may be created for individual areas of their district.

PAR. 2. Such provisions shall require the approval of the Imperial Insurance Office; they are to be published in the Reichsanzeiger.

#### ARTICLE 838

In the branch institutes insurance at the cost of the undertakers (art. 633, par. 2, No. 2) shall be for premiums according to a tariff of premiums.

#### ARTICLE 839

PARAGRAPH 1. The undertakers must make a report for each quarter of a calendar year and not later than three days after the expiration

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Code of January 1, 1913

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thereof to the authority in whose district the activities are carried on, and who shall be specified by the highest administrative authority, concerning the following subjects:

1. The working days on which operations were conducted;
2. The payments made to the insured persons therefor.

PAR. 2. The Imperial Insurance Office shall prescribe the form for the report.

PAR. 3. Persons neglecting to make such reports shall be proceeded against as in the case of the branch institutes for building work (art. 800).

#### ARTICLE 840

PARAGRAPH 1. The authority shall, within two weeks after the expiration of the quarter of the calendar year transmit these reports through the channels of the local insurance office to the directorate of the accident association or the administrative body of the accident association designated by the latter.

PAR. 2. In connection therewith the authority (art. 839) shall certify that nothing further has become known to them concerning the keeping of riding animals or vehicles (art. 537, numbers 6 and 7) not conducted as a business, in their district.

#### ARTICLE 841

The tariff of premiums must show what unit rate of premiums must be paid for each one-half mark [11.9 cents] or fraction thereof of computable earnings.

#### ARTICLE 842

PARAGRAPH 1. In other matters the provisions for branch institutes for building work (arts. 784, 786 to 797, 803 to 818, and 822 to 824) shall be applicable for these branch institutes.

PAR. 2. If an insurance association takes the place of a branch institute then articles 647, 648, and 736 shall be applicable to it, and the provisions for branch institutes contained in articles 803 to 818, 822 to 824, 836, paragraphs 1 and 2, and articles 838 to 841, shall be correspondingly applicable. The insurance association must also accumulate a reserve.

### SECTION EIGHT.—ADDITIONAL INSTITUTIONS

#### ARTICLE 843

The accident associations may create institutions for—

1. Insurance against liability for undertakers (art. 633) and persons of like status.

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Code of January 1, 1913

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2. Funds providing subsidies to pensions and funds for retirement pensions for establishment officials, members of the accident association, insured persons, officials of the accident associations, and the relatives of these persons.
3. The procuring of employment for persons injured by accident.

## ARTICLE 844

PARAGRAPH 1. The accident association shall be the carrier of these institutions.

PAR. 2. Participation in these institutions is voluntary.

## ARTICLE 845

Decisions of the general meeting of the accident association:

Concerning institutions of the kind designated in article 843, Nos. 1 and 2, and the by-laws thereof, must have the approval of the Federal Council.

Institutions of the kind designated in article 843, No. 3, must have the approval of the Imperial Insurance Office.

## ARTICLE 846

The supervision of these institutions shall be administered by the Imperial Insurance Office.

## ARTICLE 847

PARAGRAPH 1. Accident associations may unite to form such institutions in common.

PAR. 2. The agreement of union may only become effective at the beginning of a fiscal year.

PAR. 3. For the approval of such unions article 845 shall be correspondingly applicable.

## SECTION NINE.—ACCIDENT PREVENTION—SUPERVISION

## I. REGULATIONS FOR ACCIDENT PREVENTION

## ARTICLE 848

PARAGRAPH 1. The accident associations are obliged to issue the necessary regulations concerning—

1. The arrangements and orders which the members are required to provide for the prevention of accidents in their establishments.

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Code of January 1, 1913

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2. The rules of conduct which the insured persons must observe for the prevention of accidents in the establishments.

PAR. 2. Regulations for the prevention of accidents may also be issued for individual districts, branches of industry, and kinds of establishments.

PAR. 3. In these regulations it must be specified in what manner they are to be made known to the insured persons.

PAR. 4. If workmen are employed in an establishment who are not familiar with the German language then the regulations for the prevention of accidents and the decrees of the mining inspection which replace them are to be made in another language: *Provided*, That together 25 persons speak such language.

#### ARTICLE 849

If establishments belong to an accident association and these establishments because of their nature should have been apportioned to another accident association (arts. 540, 542, 631, and 632), then regulations for the prevention of accidents shall be issued for these establishments which correspond to the regulations of those accident associations to which the establishments because of their nature should have belonged.

#### ARTICLE 850

An appropriate period of time is to be allowed to the members in order to institute the arrangements prescribed for the prevention of accidents.

#### ARTICLE 851

Violations by the members of these regulations may be punished with fines up to 1,000 marks [\$238], by the insured persons with fines up to 6 marks [\$1.43].

#### ARTICLE 852

A draft of the regulations is to be transmitted to the Imperial Insurance Office. If the accident association is divided into sections, the directorates of the sections affected must in advance render an opinion upon the draft.

#### ARTICLE 853

PARAGRAPH 1. In the preparation and final decision upon these regulations the directorate of the accident association must call in representatives of the insured persons who shall have the full right to vote thereon and shall have the same number of votes as the members of the directorate participating.

PAR. 2. The same shall be correspondingly applicable for opinions in

regard to protective regulations issued on the basis of article 120e, paragraph 2, of the Industrial Code.

#### ARTICLE 854

The directorate of the accident association must invite the Imperial Insurance Office to the sessions in which the draft of the regulations is to be prepared and decided upon.

#### ARTICLE 855

In case regulations for the prevention of accidents or protective regulations on the basis of 120e, paragraph 2, of the Industrial Code are applicable for individual sections only, then the directorates of these sections shall call in the insured persons for the purpose of securing their opinion. In such cases article 853, paragraph 1, shall be correspondingly applicable.

#### ARTICLE 856

The draft of the regulations is to be communicated to the representatives of the insured persons at the same time that the invitation is sent for the meeting in which the regulations are to be discussed, or considered, or decided upon.

#### ARTICLE 857

Once each year the directorate, which shall call in at the same time representatives of the insured persons (art. 853, par. 1), shall take cognizance of the reports of the technical supervisory officials and shall suggest measures which seem required for the improvement of the regulations for the prevention of accidents. In such cases article 854 is applicable.

#### ARTICLE 858

PARAGRAPH 1. Representatives of the insured persons shall be elected from the associates of the superior insurance office in whose district the accident association or the section has members. Those associates of the superior insurance office only are entitled to election, however, who are competent to act as representatives of the insured persons and do not belong within the scope of the agricultural accident insurance or the navigation accident insurance.

PAR. 2. The mining accident association may in its constitution provide that the representatives of the insured persons must be elders of the miners. If this provision is enacted the representatives of the insured persons shall be elected from the elders of the miners' associations and miners' funds affected.

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Code of January 1, 1913

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## ARTICLE 859

As representatives of the insured persons only those are eligible who are themselves insured according to this law against accident and are employed in an establishment which belongs to an accident association. In other respects article 12 is applicable.

## ARTICLE 860

PARAGRAPH 1. The Imperial Insurance Office shall issue the election rules.

PAR. 2. A representative of this office shall conduct the election.

## ARTICLE 861

For each representative of the insured persons a first and a second alternate must be elected. The alternate shall take his place if he is prevented from performing his duties and replace him for the remainder of his term of office if he leaves before this time, in the order according to which the election results.

## ARTICLE 862

The Imperial Insurance Office shall decide controversies concerning the validity of the election.

## ARTICLE 863

The chairman of the directorate shall determine the allowance (art. 21) for the representatives of the insured persons.

## ARTICLE 864

PARAGRAPH 1. The regulations for the prevention of accidents must have the approval of the Imperial Insurance Office; the decision senate shall decide thereon.

PAR. 2. The minutes of the proceedings of the directorates must accompany the application for the approval. The minutes must show how the representatives of the insured persons have voted; they must further contain an opinion of the directorates of the sections affected.

## ARTICLE 865

PARAGRAPH 1. An opportunity must be given to the highest administrative authorities affected to express an opinion before the approval is granted.

PAR. 2. Regulations for the prevention of accidents applying to estab-

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Code of January 1, 1913

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lishments which are subject to the mining inspection may be approved only if the highest administrative authority acquiesces.

#### ARTICLE 866

Even if the regulations for the prevention of accidents or parts thereof do not apply solely to individual sections, the Imperial Insurance Office may order that the directorates of the sections shall call in the representatives of the insured persons to secure their opinion before granting its approval.

#### ARTICLE 867

If the general meeting of the accident association amends the decisions which the directorate and the representatives of the insured persons have made, then the Imperial Insurance Office shall specify whether the directorate, together with the representatives of the insured persons, shall again discuss and decide upon this matter.

#### ARTICLE 868

If the Imperial Insurance Office makes its approval dependent on the amendment of the regulations, then it shall also specify whether the representatives of the insured persons shall be called in for discussion and for final decision.

#### ARTICLE 869

The directorate of the accident association must communicate the regulations to the superior administrative authorities whose districts are affected.

#### ARTICLE 870

The directorate of the accident association is authorized to determine the fines imposed upon members of the accident association, and the local insurance office (decision committee) for those imposed upon insured persons. The superior insurance office (decision chamber) shall decide upon appeal against the imposition of fines by the directorate of the accident association.

#### ARTICLE 871

Those decrees which the State officials have issued for specified branches of industry or kinds of establishments for the prevention of accidents, must, in advance, be communicated to the directorates of the accident associations or of the sections for their opinions, provided that there is no risk in the delay. In such cases the representatives of the insured persons

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Code of January 1, 1913

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are to be called in in the same manner as in the discussion of the regulations for the prevention of accidents.

**ARTICLE 872**

The police authorities must communicate to the accident association affected those orders which they enact for the prevention of accidents according to article 120d, paragraph 1, of the Industrial Code.

**ARTICLE 873**

Whenever the matter concerns the issuance of regulations for the prevention of accidents which at the same time are intended to assure the safe operation of railways, then articles 852 to 856, 866 to 868, 871, and 872 are not applicable.

**II. SUPERVISION****ARTICLE 874**

The accident associations must provide for the execution or the regulations for the prevention of accidents.

**ARTICLE 875**

The accident associations are authorized, and upon demand of the Imperial Insurance Office, are obligated to appoint technical supervisory officials in sufficient number to supervise the carrying out of the regulations for the prevention of accidents and to take cognizance of the arrangements of the establishments in so far as this is of importance in regard to membership in the accident association or for the classification in the risk classes. For such officials those persons may also be appointed who have formerly belonged to the insured establishments as workmen.

**ARTICLE 876**

In order to verify the wage reports which have been handed in, the accident associations may inspect, through their accounting officials, those books and lists from which the number of workmen and officials employed and the amount of the wages earned are computed.

**ARTICLE 877**

The business of the technical official and of the accounting official may, with the approval of the Imperial Insurance Office, be united in one person.



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Code of January 1, 1913

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## ARTICLE 878

The undertakers are obligated to permit the technical supervisory officials of their accident association to enter the place of their business during business hours and are obligated to lay before the accounting officials the books and lists (art. 876) in such place.

## ARTICLE 879

PARAGRAPH 1. The Imperial Insurance Office may force the undertakers to comply with their duties arising out of article 878 upon the application of any person participating in the supervision, by the imposition of fines up to 300 marks [\$71.40].

PAR. 2. The superior insurance office decides finally upon appeal.

## ARTICLE 880

The undertaker may demand special experts instead of the technical supervisory officials if he fears, on account of the latter's inspection, some damage to his trade secrets or other injury to his business activities.

## ARTICLE 881

PARAGRAPH 1. In such cases the undertaker must, as soon as possible, designate to the directorate of the accident association several persons who are competent and ready to inspect the establishment at his expense and to give the accident association the necessary information.

PAR. 2. The Imperial Insurance Office shall decide, upon request, if the parties can not agree in the matter.

## ARTICLE 882

The local insurance office of the place of residence shall put under oath the members of the administrative bodies of the accident associations, the technical supervisory and accounting officials, as well as the special experts, to keep secret all matters which become known to them through the supervision of the establishments or through the examination of the books or lists, as well as not to make an unauthorized use of business and trade secrets.

## ARTICLE 883

PARAGRAPH 1. The directorate of the accidents association must report the name and residence of the technical supervisory and accounting officials to the superior administrative authorities affected.

PAR. 2. The directorate must make reports to the Imperial Insurance Office concerning the activities of the technical supervisory officials and,

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Code of January 1, 1913

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upon request, to the State supervisory officials (art. 139b of the Industrial Code).

## ARTICLE 884

PARAGRAPH 1. If the supervisory official of the accident association has received information concerning orders which the State officials have issued for the prevention of accidents, then he may not give orders in conflict therewith.

PAR. 2. If, however, he believes a conflicting order necessary or considers an order of the State officials inconsistent with a regulation for the prevention of accidents, he shall report thereon to the directorate of the accident association. The latter may then call upon the superior officers of the State officials.

## ARTICLE 885

PARAGRAPH 1. If the State supervisory official considers orders of the accident association as conflicting or inconsistent with the regulations for the prevention of accidents, then the official shall communicate the fact to the directorate of the accident association.

PAR. 2. If the directorate considers the protest unfounded, it may call upon the superior officers of the State officials.

## ARTICLE 886

The directorate of the accident association must transmit to the Imperial Insurance Office information concerning all proceedings which concern differences of opinion between the two sets of supervisory officials.

## ARTICLE 887

If on account of the negligence of an undertaker the accident association incurs cash expenditures on account of the supervision of his establishment or on account of the examination of his books and lists then the directorate may charge these costs to the undertaker and in addition impose upon him fines up to 100 marks [\$23.80]. The costs shall also be collected in the same manner as communal taxes.

## ARTICLE 888

With the consent of the association and under an agreement as to the costs the local insurance office may assist the accident association in regard to the supervision of those receiving pensions. In this matter the decision committee shall decide. If the committee declines then on appeal the superior insurance office shall decide finally.

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Code of January 1, 1913

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## ARTICLE 889

The undertakers are required to permit the permanent members of the Imperial Insurance Office authorized by the Imperial Insurance Office to enter their places of work during the hours of operation, in order to determine the administration and effect of the regulations for the prevention of accidents which have been issued (art. 848). The Imperial Insurance Office may enforce the compliance of this obligation through fines up to 300 marks [\$71.40].

## III. SPECIAL PROVISIONS FOR BUILDING OPERATIONS AND FOR THE KEEPING OF RIDING ANIMALS AND CONVEYANCES

## ARTICLE 890

PARAGRAPH 1. Regulations for the prevention of accidents are also to be issued for activities in connection with building operations not carried on as a business and for the keeping of riding animals and conveyances not carried on as a business (art. 537, Nos. 6 and 7).

PAR. 2. That accident association is competent in whose branch institute the persons employed in such activities are insured. If they are insured in an insurance association, then the latter is competent.

## ARTICLE 891

PARAGRAPH 1. Subject to the following provisions, articles 848 to 889 shall be applicable also for these activities.

PAR. 2. In case of violations of the regulations for the prevention of accidents, fines up to 100 marks [\$23.80] may be imposed on the undertakers of short building operations.

PAR. 3. In an insurance association, the representatives of the insured persons are elected from the associates of the superior insurance office over whose districts the accident association or section extends; in this case article 858, paragraph 1, sentence 2, shall be applicable.

## SECTION TEN.—ESTABLISHMENTS AND ACTIVITIES FOR THE ACCOUNT OF PUBLIC BODIES

## ARTICLE 892

PARAGRAPH 1. If the Empire or a federal State is a carrier of the insurance, then it shall take the place of the accident association and assume the rights and duties of the administrative bodies of the accident association through administrative authorities. For the military administration, the latter shall be specified by the highest military administrative

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Code of January 1, 1913

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authority of the division of the army, for the other administrations of the Empire, the imperial chancellor, and for the State administration, the highest administrative authority.

PAR. 2. The same rule shall be applicable for communes, unions of communes, and other public bodies which are carriers of the insurance. The highest administrative authority shall specify the officials for the execution hereof.

#### ARTICLE 893

PARAGRAPH 1. The Imperial Insurance Office shall be informed concerning the administrative authorities.

PAR. 2. The administrative authorities already authorized shall continue to act.

#### ARTICLE 894

If the Empire, the federal State, the commune, the union of communes, or another public corporation, is a carrier of the insurance, then the following articles are not applicable:

The provisions relating to changes in the status of the accident association (arts. 635 to 648);

The provisions in regard to the constitution of the accident association contained in articles 649 to 720;

The regulations concerning supervision (arts. 722 to 725);

The provisions concerning the collection of funds as well as concerning the procedure in regard to assessments and collections (arts. 731 to 776);

The provisions in regard to transferring amounts to the Post Office Department in articles 781 and 782;

The provisions concerning branch institutes (arts. 783 to 842);

The provisions in regard to additional institutions (arts. 843 to 847);

The provisions in regard to accident prevention and supervision in articles 848 to 887, and 889 to 891;

The penal provisions in articles 908 to 910, 912 and 913.

#### ARTICLE 895

Whoever designates the administrative authorities shall also issue the administrative regulations in order to execute the provisions of this section.

#### ARTICLE 896

The administrative provisions may extend the insurance obligation to establishment officials with annual earnings of more than 5,000 marks

Code of January 1, 1913

[\$1,190], in so far as the latter are not exempt from insurance according to article 554.

## ARTICLE 897

PARAGRAPH 1. If the administrative authority in order to prevent accidents wants to issue regulations with penal provisions covering insured persons, then not less than three representatives of the insured persons shall be called in for discussion and advice.

PAR. 2. A representative of the authority shall conduct the discussion; he may not be the immediate official superior of the representatives just mentioned.

PAR. 3. In so far as the matter concerns the issuing of regulations which are intended to assure the safe operation of railways, the above is not applicable.

## SECTION ELEVEN.—LIABILITY OF UNDERTAKERS AND THEIR REPRESENTATIVES

## I. LIABILITY TO INJURED PERSONS AND SURVIVORS

## ARTICLE 898

The undertaker (art. 633) is liable to injured persons and their survivors (art. 588 to 594) even if they have no claim to a pension, according to other legal provisions for the compensation of injuries which an accident of the kind designated in articles 544 and 546 has caused, only if it has been determined by the penal decision that he has purposely caused the accident. The liability of the undertaker is then limited to the amount by which such compensation exceeds that of the accident insurance.

## ARTICLE 899

The same rule is applicable in the case of compensation claims of injured persons and their survivors against the authorized agents or representatives of the establishment and against the overseers of the establishment and of the workmen.

## ARTICLE 900

The claim may also be made valid if on account of the death, absence, or of a cause other than that which rests in the person of the one obligated, no penal decision has been delivered.

## ARTICLE 901

PARAGRAPH 1. If the regular court must decide in regard to such claims,

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Code of January 1, 1913

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then the court is bound by the decision which has been delivered in a procedure according to this law, as to the following points:

Whether an accident which entitles to compensation has occurred;

To what extent and by what carrier of the insurance, the compensation is to be granted.

PAR. 2. The regular court shall suspend its procedure until the decision in the procedure according to this law has been rendered. This, however, does not apply to arrests and acts for the time being.

#### ARTICLE 902

Instead of the person entitled to the compensation, the undertakers or persons of like status according to article 899, from whom the injured person or his survivors demand compensation for injuries, may apply for the determination of the compensation according to this law, and may also make use of legal remedies. The lapse of time limits which, without their fault, have expired, shall not act against them; this shall not apply for time limits of procedure in so far as the undertaker or person of like status according to article 899 shall himself conduct the procedure.

### II. LIABILITY TO ACCIDENT ASSOCIATIONS, SICK FUNDS, ETC.

#### ARTICLE 903

PARAGRAPH 1. If it is determined by a penal decision that the undertaker or person of like status according to article 899 has caused the accident either purposely or negligently through failure to observe such care to which they are especially obligated on account of their office, occupation, or industry, then they are liable for everything which the communes, poor law unions, sick funds, miners' associations, miners' funds, substitute funds, and funeral or other relief funds have had to expend because of the accident according to the law or constitution. Instead of the pension the capitalized value thereof may be demanded.

PAR. 2. They are also liable—

If it has been determined by the penal decision that in the direction or execution of a building operation they have acted contrary to the generally recognized rules in building work;

If the accident has been caused through such violations.

PAR. 3. The provisions of article 900 in regard to liability without determination by penal decision are also applicable for these claims.

PAR. 4. Undertakers and persons of equal status according to article 899 are liable to the accident association for its expenditures, even if there has been no determination by penal decision.

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Code of January 1, 1913

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## ARTICLE 904

PARAGRAPH 1. For accidents caused by the persons named below, the following bodies are liable as undertakers, if the persons so named have performed duties belonging to them; the bodies liable and the persons for whom liability attaches are—

1. A stock company, mutual insurance association, a registered co-operative society, a guild, or other legal person, for a member of the directorate;
2. A company with limited liability, for a business director;
3. Any other business corporation, for a partner who is authorized to conduct the business;
4. In the case of the liquidation of a business corporation, a mutual insurance association, a registered coöperative society, a guild, or other legal person, for one of the liquidators.

PAR. 2. This provision is correspondingly applicable for the Empire, federal States, communes, unions of communes, as well as other corporations, foundations, and institutions created by public law.

## ARTICLE 905

PARAGRAPH 1. If the accident has been brought about negligently through failure to observe that care, to which the undertaker and persons of equal status (art. 899) because of their office, occupation, or industry are especially obligated, then the general meeting of the accident association may refrain from making a claim for the accident association.

PAR. 2. The constitution may transfer this right to the directorate.

## ARTICLE 906

PARAGRAPH 1. If the directorate desires to make a claim for reimbursement it shall communicate in writing its decision to the person liable to make reimbursement. The latter may then appeal within one month to the general meeting of the accident association.

PAR. 2. If the person to make reimbursement appeals within this time to the general meeting of the accident association, suit may be instituted only after the decision of the latter, and in other cases only after the expiration of one month with a notification.

## ARTICLE 907

PARAGRAPH 1. Such claims lapse in 18 months after the day on which the penal decision has become effective. In those cases in which no penal decision is required they lapse within one year after the legal and effective determination of the obligation to compensation on the part of

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Code of January 1, 1913

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the accident association, but at the latest within 5 years after the accident. If the general meeting of the accident association is appealed to, such action shall act as a stay to the expiration. A new period of expiration may only then begin, if the general meeting of the accident association has made a decision or if the appeal has been decided otherwise.

PAR. 2. The provisions of article 901, paragraph 1, in regard to the regular courts being bound to follow the decision, are also applicable for these claims.

## SECTION TWELVE.—PENAL PROVISIONS

### ARTICLE 908

Under a proviso that the undertaker was aware of the inaccuracy of the statements or must have known under the circumstances, the directorate of the accident association may impose fines upon employers up to 500 marks [\$119]—

1. If on the basis of the law or of the constitution they have transmitted reports for the computation of contributions or premiums or for the classification in risk classes which contained actually incorrect statements;
2. If in the report of the establishment (art. 653) a later date is stated as the time of the opening of the establishment or of the beginning of the insurance obligation than that date on which the establishment was opened or became subject to the insurance.

### ARTICLE 909

The directorate of the accident association may in addition impose fines not to exceed 300 marks [\$71.40] on the undertakers if they do not comply in due time with the obligation—

1. To report the establishment and changes in the establishment, as also to post placards in the establishment;
2. To keep and preserve wage lists (wage books);
3. To transmit wage reports and the reports for the computation of premiums;
4. To comply with the provisions of the constitution in regard to the shutting down of an establishment and to a change of the undertaker.

### ARTICLE 910

PARAGRAPH 1. The superior insurance office (decision chamber) shall decide finally upon appeals against the determination of fines by the directorate of the accident associations.



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Code of January 1, 1913

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PAR. 2. The decision chamber shall decide, though not finally, in the cases mentioned in articles 870 and 887 as well as of article 891 in connection with these provisions.

#### ARTICLE 911

Undertakers or their employees who purposely deduct contributions or premiums, either wholly or partly, from earnings or deliberately bring about the same, shall be punished with fines up to 300 marks [\$71.40] or with imprisonment, if a severer penalty has not been incurred according to other legal provisions.

#### ARTICLE 912

Whenever on the basis of this law the undertaker is liable to penalties the following persons shall be considered as having the same status:

1. The members of the directorate, if a stock company, mutual insurance association, registered coöperative society, guild, or other legal person is an undertaker;
2. The business manager, if an association with limited liability is an undertaker;
3. All copartners personally liable, provided that they are not excluded from representation, if another form of business corporation is the undertaker;
4. The legal representatives of undertakers not legally competent to transact business, or partially so, as well as liquidators of a business corporation, a mutual insurance association, a registered coöperative society, a guild, or any other legal person.

#### ARTICLE 913

PARAGRAPH 1. The undertaker may transfer the duties laid upon him on the basis of this law to business managers; in so far as the matter does not relate to arrangements founded on regulations for the prevention of accidents, he may also transfer the duties to a supervisory staff or other officials of his establishment.

PAR. 2. If such representatives act in violation of those regulations which impose a penalty upon the undertaker, then the penalty shall apply to them. In addition to them the employer may be penalized in the following cases:

1. If the violation has taken place with his knowledge;
2. If in the selection or supervision of his representatives he has not observed the required care in the transaction; in these cases no other penalty than a fine may be imposed upon the undertaker.

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Code of January 1, 1913

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PAR. 3. If the fines which have been imposed by the directorate of the accident association can not be collected from the representatives, then the employer is liable in their place. His liability is to be specified in fixing the penalty.

#### ARTICLE 914

In the case of insured persons, the fines imposed upon them shall be paid into the sick fund if the person penalized belongs at the time of the violation to a sick fund; otherwise, it shall be paid into the general local sick fund of his place of employment, and where such fund does not exist, then into the rural sick fund. The same shall also apply to fines which administrative authorities impose upon insured persons (art. 897).

### PART TWO

## AGRICULTURAL ACCIDENT INSURANCE

### SECTION ONE.—SCOPE OF THE INSURANCE

#### ARTICLE 915

PARAGRAPH 1. Agricultural establishments (art. 161) are subject to the accident insurance.

PAR. 2. The Imperial Insurance Office may specify what branches of industry are considered as agricultural establishments.

#### ARTICLE 916

PARAGRAPH 1. If the agricultural undertaker carries on work on his own land or on the land of others for his own agricultural establishment without transferring this work to another undertaker, then the following shall be considered as parts of the agricultural establishment:

Current repairs to buildings which are used in agricultural operations;  
The cultivation of the ground and other building work for the establishment, especially the making or maintenance of roads, dams, canals, and watercourses for this purpose.

PAR. 2. If because of public and lawful obligation, the agricultural undertaker carries on work for the communes for the making or maintenance of buildings, roads, dams, canals, and watercourses, as an undertaker, and these obligations rest upon him as an agriculturalist, then they are to be considered as part of his agricultural establishment.

#### ARTICLE 917

PARAGRAPH 1. In the meaning of article 915, paragraph 1, gardening and the care of parks and gardens as well as cemetery establishments shall

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Code of January 1, 1913

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be considered as agricultural establishments in so far as they are not subject to industrial accident insurance.

PAR. 2. Small home gardens, and ornamental gardens which are not worked regularly, and to a considerable extent with a special labor force and whose products are consumed principally by the household are not considered as agricultural establishments.

#### ARTICLE 918

The insurance is applicable also to undertakings which the agricultural undertaker carries on in addition to his farm but in economic dependence thereon (agricultural subsidiary establishments). In this class belong especially those establishments which either wholly or principally are intended for the following purposes:

1. To prepare or work up products of the farm of the undertaker;
2. To supply the needs of his farm;
3. To procure or to work up the products of the earth from his land.

#### ARTICLE 919

Article 918 is not applicable to—

1. Mines, salt works, concentrating works, shipyards, metallurgical and metalworking plants, yards for the preparation of building materials as well as to establishments which manufacture or work up as a business either explosives or explosive articles;
2. Establishments which the Imperial Insurance Office has declared to have the status of factories—
  - Because of their considerable scope;
  - Because of their special equipment with machinery;
  - Because of the number of their industrial workmen.

#### ARTICLE 920

Establishments or activities in inland navigation and rafting are only included in the insurance of the principal agricultural establishments if they do not extend beyond the scope of local traffic.

#### ARTICLE 921

Those activities which because of their nature are subject to the industrial accident insurance in a branch institute or an insurance association shall be insured in that agricultural accident association to which the undertaker having the activities of the same kind belongs: *Provided*, That these other activities are of greater extent than the former,

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Code of January 1, 1913

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## ARTICLE 922

Article 542 is applicable to the assignment of agricultural and industrial establishments of the same undertaker to the accident association.

## ARTICLE 923

PARAGRAPH 1. In establishments which according to articles 915 to 922 are subject to the insurance, the following persons shall be insured against accidents (industrial accidents): *Provided*, That they are employed in these establishments:

1. Workmen;
2. Establishment officials whose annual earnings as compensation do not exceed 5,000 marks [\$1,190].

PAR. 2. Helpers, journeymen, and apprentices are considered as workmen.

PAR. 3. In distinction from the usual agricultural workmen, that person shall be considered as an artisan who requires special technical skill for his position. This applies to foresters, gardeners, gardeners' helpers, millers, brickmakers, wheelwrights, blacksmiths, carpenters, distillers, engineers, firemen, as well as to helpers and journeymen who have gone through a period of technical training and education. The persons made subject to the agricultural accident insurance according to article 922 shall also be considered as artisans. The constitution shall determine who in addition to these shall be considered as artisans.

PAR. 4. Acts contrary to regulations do not exclude the assumption of a trade accident.

## ARTICLE 924

The insurance shall include household and other service which the insured persons while principally employed in the establishment or in the insured activities (arts. 920 and 921) are called on to perform by the undertaker or his authorized agent.

## ARTICLE 925

The constitution may extend this obligation to the following:

1. Undertakers whose annual earnings do not exceed 3,000 marks [\$714] or who regularly employ for compensation either no one or at most two persons subject to the insurance;
2. Establishment officials whose annual earnings as compensation exceed 5,000 marks [\$1,190].

## ARTICLE 926

The constitution may extend the insurance of undertakers who are principally employed in agriculture to such household activities as are connected with agriculture.

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Code of January 1, 1913

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## ARTICLE 927

PARAGRAPH 1. Undertakers may insure themselves against the consequences of trade accidents if they do not have more than 3,000 marks [\$714] of annual earnings or if they regularly employ for compensation either no one or at most two persons subject to the insurance. In this case, article 926 is also applicable.

PAR. 2. The constitution may admit them also to self-insurance if they have more than 3,000 marks [\$714] of annual earnings or if they regularly employ for compensation at least three persons subject to the insurance.

## ARTICLE 928

The provisions of articles 925 to 927 in regard to the insurance of undertakers are also applicable to their consorts employed in the establishments.

## ARTICLE 929

The following articles from the industrial accident insurance are correspondingly applicable:

1. Article 552 for the insurance of other employees in the establishment and of strangers in the establishment.
2. Article 553 in regard to the consequences of nonpunctual payment of contributions in the case of voluntary insurance.
3. Article 554 for the insurance of military persons and of officials.

## SECTION TWO.—BENEFITS OF THE INSURANCE

## ARTICLE 930

Articles 555 to 562 from the industrial accident insurance are correspondingly applicable concerning the object of the insurance.

## ARTICLE 931

PARAGRAPH 1. In the computation of the pensions for establishment officials and artisans, articles 563 to 566 and 568 are applicable in regard to the annual earnings.

PAR. 2. In addition articles 932 to 935 and 941 are applicable in this connection.

## ARTICLE 932

If the customary number of working-days in the year is so small that those employed in the establishment regularly perform work elsewhere for compensation, then in the cases mentioned in articles 565 and 566, for the number of days short of 300 working-days the local wage rate which

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Code of January 1, 1913

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at the time of the accident has been determined upon (arts. 149 to 152) for the place of employment of the injured person shall be added to the amount computed according to articles 565 or 566.

#### ARTICLE 933

Articles 564 to 566, 568, and 932 are to be correspondingly applied if the annual earnings are composed of specified amounts for at least weekly periods.

#### ARTICLE 934

If the annual earnings of the establishment officials or artisans do not amount to 300 times the local wage rate (art. 932), then the annual earnings shall be assumed to be 300 times the latter.

#### ARTICLE 935

In the case of injured young persons the pension, which shall be computed according to the local wage, shall be fixed in that age class in which the injured person belonged at the time of the accident, and is to be correspondingly increased as he reaches the higher age class.

#### ARTICLE 936

PARAGRAPH 1. In the case of workmen who are not included in articles 931 to 935, the compensation shall be fixed according to the annual earnings which the agricultural workmen at the time of the accident received on an average through agriculture and other gainful activities in the place of employment.

PAR. 2. The average annual earnings shall be determined by the superior insurance office after a hearing of the local insurance offices; the earnings shall be determined separately for men and women, for injured persons under 16 years of age, for those from 16 to 21 years of age, and for those who are over 21 years of age. Injured persons under 16 years of age (young persons) may, according to article 150, paragraph 2, be still further separated into youths and children. The separation may also be made for agriculture and for forestry.

PAR. 3. Before rendering its opinion, the local insurance office shall give a hearing to representatives of the injured persons engaged principally in agriculture.

#### ARTICLE 937

In the case of injured young persons, the compensation shall be fixed in the first place according to the average annual earnings for that age

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Code of January 1, 1913

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class in which the accident was sustained, and is to be correspondingly increased as the injured persons reach the higher age class.

#### ARTICLE 938

The pensions for undertakers, as well as for other persons employed in the establishment and strangers in the establishment (art. 929, No. 1), shall be based on the average annual earnings for agricultural workmen (art. 936) which at the time of the accident had been determined for the seat of the establishment. The constitution may provide otherwise.

#### ARTICLE 939

In so far as the annual earnings exceed 1,800 marks [\$428.40] the excess shall in every case be computed at only one-third.

#### ARTICLE 940

If the accident occurs to a person already permanently partially disabled whose compensation is to be computed according to the average annual earnings (art. 936), then of the latter only that part shall be used as a basis which corresponds to the percentage of the earning capacity before the accident.

#### ARTICLE 941

For those persons already permanently partially disabled, the local wage shall be considered as only that fraction of the local wage which corresponds to the degree of the earning capacity before the accident.

#### ARTICLE 942

PARAGRAPH 1. The commune must grant sick benefits according to article 182 to an injured workman during the first 13 weeks after the accident. In the place of the sick benefits, the commune may grant hospital treatment and house money according to articles 184 and 186. With the consent of the injured person it may also grant care according to article 185, paragraph 1, and deduct therefor not more than one-fourth of the pecuniary sick benefit. The local wage of the place of employment (par. 2) shall be used as a basic wage.

PAR. 2. The commune upon whom the obligation rests is that of the place of employment (arts. 153 to 156); the seat of the establishment, however, is not to be considered as the place of employment if the injured person was employed in a forestry establishment which extended over the districts of several communes.

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Code of January 1, 1913

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## ARTICLE 943

PARAGRAPH 1. The commune is not compelled to grant sick benefits according to article 942 in the following cases:

1. In so far as the injured person has a claim for similar relief on the basis of the sickness insurance or other legal provisions;
2. If he is exempt from insurance on account of benefits which are of value equal to those of the sickness insurance;
3. So long as he remains in a foreign country.

PAR. 2. If the parties obligated in the first place do not provide the sick benefits to the injured person then the commune shall take over the same. The expenditures of the commune on this account must be reimbursed by those upon whom the obligation rests.

PAR. 3. In such cases reimbursement for sick care, and also for treatment in the hospital, shall be three-eighths of the basic wage according to which the pecuniary sick benefit of the person entitled thereto is computed, and for maintenance in the hospital one-half of the basic wage. If no other basic wage is specified, then the local wage of the place of employment shall be used (art. 942, par. 2).

## ARTICLE 944

PARAGRAPH 1. Upon demand of the commune, the sick benefits must be taken over by the rural sick fund, and in the absence of such, by the general local sick fund for the place of residence or of abode.

PAR. 2. The commune must reimburse the expenditures thereof. In such cases article 943, paragraph 3, is applicable if a higher expenditure is not proved.

## ARTICLE 945

PARAGRAPH 1. The accident association may itself take over the course of treatment (art. 942).

PAR. 2. The commune, or subject to articles 1513 and 1516, the parties otherwise obligated (art. 943, par. 1, Nos. 1 and 2) must reimburse the accident association in so far as the injured person could claim benefits from them. In such cases article 943, paragraph 3, is applicable.

## ARTICLE 946

PARAGRAPH 1. If, in the case of injured persons who are not insured against sickness, either on the basis of the imperial insurance or in a miners' sick fund and also have no claim for sick benefits according to article 942, it is to be feared that an accident compensation will have to be granted, then the accident association may, even before the expiration



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Code of January 1, 1913

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of the first 13 weeks after the accident, inaugurate a course of treatment in order to remove the consequences of the accident or to alleviate the same.

PAR. 2. The association may place the injured person in a medical institution. In such cases article 597, paragraphs 2 to 4, are applicable.

PAR. 3. With his consent the association may grant an injured person a course of treatment according to article 185, paragraph 1.

PAR. 4. The injured person may demand from the accident association proper reimbursement for the earnings which he lost on account of the course of treatment.

#### ARTICLE 947

The accident association may determine the consequences of the accident within the first 13 weeks, even without granting the injured person a course of treatment; article 581, paragraph 1, is here correspondingly applicable.

#### ARTICLE 948

Articles 582, 583, paragraph 1, and 584 are applicable in the case of granting accident compensation before the expiration of the 13 weeks for the two cases mentioned herewith, and in such cases article 583, paragraph 1, is also applicable for the benefits of the commune (art. 942); these are—

In the case of the transfer of the claim for pecuniary sick benefit;

In the case of the accident association being bound by the attitude taken by the carrier of the sickness insurance.

#### ARTICLE 949

PARAGRAPH 1. If the matter does not concern a claim for reimbursement, the local insurance office decides finally in controversies between the commune and the sick fund on account of the taking over of the sick benefits (art. 944).

PAR. 2. Controversies concerning the claims for reimbursement arising out of articles 943 to 945 shall be decided by judgment procedure.

#### ARTICLE 950

PARAGRAPH 1. Articles 586 to 596 of the industrial accident insurance are applicable as regards compensation for damages in fatal cases.

PAR. 2. However, the annual earnings shall be fixed according to the provisions which are applicable in agricultural accident insurance in the case of physical injury but with the exception of articles 940 and 941.

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Code of January 1, 1913

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Article 587 is applicable only if the compensation is not computed according to the average annual earnings already determined (art. 936).

#### ARTICLE 951

The accident association may grant treatment in a medical institution in place of medical treatment and compensation (art. 930 in connection with art. 558). In such cases articles 597, paragraphs 2 to 5, and 598 are applicable.

#### ARTICLE 952

In addition the provisions of the industrial accident insurance are applicable in regard to the following:

House care (*Hauspflege*) (art. 599);

Special relief in case of placing in a medical institution (*Heilanstalt*) (art. 602);

Inauguration of a new course of medical treatment (arts. 603 and 604);

Change of the medical institution (art. 605);

Injury to the injured person due to improper conduct in violation of orders relating to the course of treatment (art. 606);

Placing of the pensioner in a home for invalids (*Invalidenhaus*) or similar institution (art. 607).

#### ARTICLE 953

PARAGRAPH 1. With the approval of the higher administrative authority, the communes or unions of communes, may by legal enactment specify that pensions up to two-thirds of their amount shall not be paid in cash, but in kind. This applies only to pensioners who reside in the district: *Provided*, That these persons or those supporting them receive no wages as agricultural workers, but according to local custom are paid either wholly or partly in kind: *And provided*, That a mutual agreement is reached concerning the payment in kind instead of the pensions.

PAR. 2. The value of the commodities shall be determined by the higher administrative authority according to the average prices.

#### ARTICLE 954

PARAGRAPH 1. The payments in kind shall be granted by the commune of the place of residence. The claim to the compensation shall be transferred to the commune to the extent of the value of the payments in kind.

PAR. 2. The local insurance office (decision committee) shall decide controversies between the commune and the beneficiary. The superior insurance office decides finally upon appeal.

Code of January 1, 1913

PAR. 3. If the claim to the pension has been transferred to the commune finally then the accident association shall notify the post office department.

## ARTICLE 955

In addition, the provisions of industrial accident insurance are applicable concerning the following:

The new determination of the pension on account of changes in conditions (arts. 608 to 611);

The maturity of benefits and duration of receipt of pension (arts. 612 and 613);

The right to benefits after the death of the beneficiary (art. 614);

The suspension of compensation (art. 615);

Settlements in the form of capital sums (arts. 616 to 618);

The relinquishment of a claim for reimbursement and legal rights (arts. 619 and 620);

The transferring, assigning, execution, of the claims and deductions from the claims (arts. 621 and 622).

## SECTION THREE.—CARRIERS OF THE INSURANCE

## I. ACCIDENT ASSOCIATIONS AND OTHER CARRIERS OF THE INSURANCE

## ARTICLE 956

PARAGRAPH 1. The accident association as carriers of the insurance shall include the undertakers of the insured establishments.

PAR. 2. The accident association shall be formed according to territorial districts. They shall include all establishments of the branches of industry in the district for which they have been created.

PAR. 3. Those accident associations which have been created according to article 18 of the law of May 5, 1886 (Reichs-Gesetzblatt, p. 132) concerning accident and sickness insurance of persons employed in agricultural and forestry establishments shall retain their present status subject to the changes permissible according to article 960.

## ARTICLE 957

PARAGRAPH 1. The Empire or a Federal State is a carrier of the insurance if the establishment is conducted for its account, unless the establishments according to article 109 of the law mentioned in article 956 belong to the accident associations created for them.

PAR. 2. Article 625, paragraphs 2 to 5, of the industrial accident insurance is applicable for the subsequent entry into the accident association, rewithdrawal, and reëntrance therein.

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Code of January 1, 1913

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## ARTICLE 958

The undertaker of an establishment is the person for whose account the establishment is conducted.

## ARTICLE 959

For establishments which comprise parts, or subsidiary establishments of various branches of industry, article 631, paragraph 1, of the industrial accident insurance applies correspondingly—

For the apportionment of several establishments of the same undertaker to one accident association, article 632 of the industrial accident insurance is applicable;

For the compensation of accidents in establishments of third parties, article 634 of the industrial accident insurance is applicable.

## II. CHANGES IN THE STATUS OF THE ACCIDENT ASSOCIATION

## ARTICLE 960

PARAGRAPH 1. For changes in the status of the accident associations, articles 635 to 646 of the industrial accident insurance are applicable.

PAR. 2. If the Federal Council gives its approval, the constitution for the new accident association shall be decided upon according to articles 20, 21, and 24, paragraph 3, of the law of May 5, 1886 (Reichs-Gesetzblatt, p. 132).

## ARTICLE 961

The same provisions as in the case of the industrial accident insurance (arts. 647 and 648) apply in case of the dissolution of the accident associations.

## SECTION FOUR.—ORGANIZATION

## I. MEMBERSHIP AND RIGHT TO VOTE

## ARTICLE 962

Every undertaker is a member of the accident association if his establishment belongs to the branches of industry covered by it, and the establishment has its seat in the district of the association.

## ARTICLE 963

PARAGRAPH 1. All the pieces of ground of an undertaker, all the agricultural operations of which are served by common farm buildings, shall be considered as a single establishment.

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Code of January 1, 1913

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PAR. 2. If the agricultural establishment extends over the districts of several communes, then it shall have its seat in that commune where the common farm buildings or the buildings serving its principal purpose are located. The undertaker may make an agreement with the communes concerning a different seat for the establishment.

#### ARTICLE 964

PARAGRAPH 1. Several pieces of ground of a forestry establishment, belonging to one undertaker which are subject to the same immediate business management (forestry district), shall be considered as a single establishment.

PAR. 2. Pieces of ground of forestry establishments of several undertakers shall be considered as separate establishments even if together they are subject to the same business management.

PAR. 3. If a forestry establishment extends over a district of several communes, then its seat shall be considered to be in the locality where the largest part of the forestry area is located. The undertaker may agree with the communes in regard to a different seat for the establishment.

#### ARTICLE 965

The membership begins with the opening of the establishment or with the beginning of its insurance obligation; the beginning of the membership of the Empire and the federal States is regulated according to article 957.

#### ARTICLE 966

If the members or their legal representatives do not possess civic rights, they shall have no right to vote.

### II. REGISTRATION OF THE ESTABLISHMENTS

#### ARTICLE 967

PARAGRAPH 1. Each newly opened establishment must be reported by the communal authority to the directorate of the accident association through the channels of the local insurance office.

PAR. 2. The directorate shall examine whether the establishment belongs to the accident association.

PAR. 3. If the directorate refuses the membership application, it shall communicate the fact to the local insurance office, and the latter may appeal for a decision of the Imperial Insurance Office; upon application of the accident association such step must be taken.

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Code of January 1, 1913

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**III. CHANGES IN THE UNDERTAKERS—CHANGES IN THE ESTABLISHMENT  
AND IN ITS MEMBERSHIP IN THE ACCIDENT ASSOCIATION****ARTICLE 968**

The undertaker must report to the directorate of the accident association each change in the person for whose account the establishment is conducted within the period specified in the constitution. The undertaker remains liable for the contributions up to the end of the fiscal year in which the change was reported without thereby releasing his successor from liability.

**ARTICLE 969**

Articles 665 to 673 of the industrial accident insurance are correspondingly applicable in regard to the undertaker's duty of reporting changes in the establishment which are of importance for his membership in the accident association; the same articles apply in regard to the transfer and dissolution of the establishment as well as to the transfer of the burden of accidents and of a part of the reserves.

**ARTICLE 970**

PARAGRAPH 1. The obligation to report changes in the establishment which are of importance in connection with the assessment and the procedure in this connection, are to be regulated in the constitution.

PAR. 2. Articles 999 and 1000 are correspondingly applicable in opposing the decision which the accident association has issued on the basis of changes reported or which it has issued of its own accord.

**IV. CONSTITUTION****ARTICLE 971**

The accident associations shall regulate their internal administration and order of business by a constitution which shall be decided upon at the general meeting of the accident association.

**ARTICLE 972**

The constitution must specify—

1. The name, the seat, and the district of the accident association;
2. The composition, rights, and duties of the directorate;
3. The form of the declaration of the decisions of the directorate, as well as its signature on behalf of the accident association; the

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Code of January 1, 1913

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- manner of making decisions in the directorate and its representation as to third parties;
4. The creation of the committee of the accident association to decide upon protests (arts. 1000 and 1023);
  5. The composition and calling of the general meeting of the accident association and its method of arriving at decisions;
  6. The right to vote of members and the examination of their credentials;\*
  7. Representation of the accident association as against the directorate;
  8. The rates for loss of earnings and for traveling expenses which are to be granted to the representatives of the insured persons (art. 21);
  9. The standard for the assessment of the contributions and providing that the latter are not assessed like taxes, the procedure in valuation and classification;
  10. The procedure in case of the opening of new establishments, changes in establishments and changes in the person of the undertaker;
  11. The consequences of shutting down the establishment or of a change in the person of the undertaker, especially as to the guaranteeing of his contributions, if he shuts down the establishment;
  12. The drawing up, examining, and accepting the annual balance sheet;
  13. The administrative action relating to the issuance of the regulations containing provisions for the prevention of accidents and for the supervision of the establishments;
  14. The procedure in reporting for membership and separation from membership of the insured undertakers, and other persons insured according to article 925, No. 2, and article 929, No. 1, as well as the amount and ascertainment of the annual earnings of the undertaker;
  15. The method of publishing notices;
  16. The provisions as to the amendment of the constitution;
  17. Who shall be considered as artisans.

#### ARTICLE 973

The provisions of the industrial accident insurance are applicable in regard to the following subjects:

Divisions into sections and appointment of district agents (arts. 678, Nos. 2 and 3, and art. 679);

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Code of January 1, 1913

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Power of the directorate of the accident association to impose penalties (art. 680);

Drawing up the constitution (arts. 681 to 683).

#### ARTICLE 974

PARAGRAPH 1. If the constitution has been approved, the directorate of the accident association must publish the name and seat of the accident association and the districts of the sections in the Reichsanzeiger or, if the district of the accident association does not extend beyond the territory of a federal State, in the official gazette of the highest administrative authority.

PAR. 2. The same rule applies in the case of changes.

#### V. ADMINISTRATIVE BODIES OF THE ACCIDENT ASSOCIATION

##### ARTICLE 975

PARAGRAPH 1. Articles 685 to 687 and 689 of the industrial accident insurance are applicable as regards the administrative bodies of the accident association.

PAR. 2. The Imperial Insurance Office is, however, not authorized, in the place of the accident association, to issue regulations for the prevention of accidents nor to appoint technical supervisory officials.

##### ARTICLE 976

PARAGRAPH 1. The general meeting of the accident association is composed of representatives of the members.

PAR. 2. The general meeting must be called into session at least once a year.

##### ARTICLE 977

PARAGRAPH 1. For a specified time the general meeting may transfer the auditing and acceptance of the annual balance sheet and the business of the directorate either wholly or partly to autonomous bodies. In such cases the agreement of the latter and approval of the highest administrative authority is necessary.

PAR. 2. The rights and duties of the administrative bodies of the accident association shall then be transferred to the autonomous bodies.

#### VI. EMPLOYÉS OF THE ASSOCIATIONS

##### ARTICLE 978

The provisions of the industrial accident insurance (arts. 690 to 705) are applicable as regards employés of the accident association who are not



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Code of January 1, 1913

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State or communal officials and, in the case of the transfer of business, to salaried business managers.

#### VII. FORMATION OF THE RISK CLASSES

##### ARTICLE 979

Articles 706 to 710 and 712 of the industrial accident insurance shall be applicable as regards the formation of risk classes (arts. 990 to 1004 and 1008). Accident associations whose establishments show but little difference in regard to the risk of accident may decide not to make use of risk classes. Such decision shall require the approval of the Imperial Insurance Office. It may be withdrawn if a list of accidents for the separate branches of the industry discloses important differences.

#### VIII. DIVISION AND JOINT CARRYING OF THE BURDEN

##### ARTICLE 980

PARAGRAPH 1. The constitution may provide that the sections shall defray the compensation up to three-fourths for accidents which occur in their districts.

PAR. 2. The amounts which thereby become a burden upon the sections shall be assessed upon their members according to the amount of their contributions.

##### ARTICLE 981

If the assessments are computed on the basis of the land tax, and thereby the sections are burdened with more than double the amount which is actually expended for them in the form of compensations and costs of administration, then the general meeting of the accident association may decide to apportion the excess upon all the sections according to the land tax.

##### ARTICLE 982

The provisions of the industrial accident insurance (arts. 714 to 716) are applicable for the joint carrying of the burden.

#### IX. ADMINISTRATION OF THE ASSETS

##### ARTICLE 983

The Imperial Insurance Office may issue regulations regarding the safe-keeping of securities in so far as the State officials or autonomous bodies do not conduct the business.

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Code of January 1, 1913

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## ARTICLE 984

The provisions of the industrial accident insurance (arts. 718 to 721) are applicable in regard to the following:

The investment of the assets;

The reports on the business and accounting operations.

## SECTION FIVE.—SUPERVISION

## ARTICLE 985

PARAGRAPH 1. Articles 722 and 723 of the industrial accident insurance are applicable with regard to the supervision of the accident associations.

PAR. 2. This supervision does not extend to the service conditions of State authorities or autonomous bodies which administer accident associations.

## ARTICLE 986

For accident associations subject to the supervision of the State insurance office, the latter takes the place of the Imperial Insurance Office in regard to the following matters:

Controversies in regard to the assignment of several establishments to one accident association, according to articles 922 and 959 in connection with article 632;

Controversies between the accident association and the Empire or a federal State in regard to the distribution of the assets in the cases mentioned in article 957 in connection with article 625, paragraph 5;

Changes in the status of the accident associations (arts. 960 and 961);

Membership of the establishment in the accident association and changes in the membership (arts. 967 and 969 in connection with art. 673, pars. 1 and 3);

Approval and drawing up of the constitution (art. 973);

Taking over the business of the accident association (art. 975);

Service regulations for the employees of the accident association as well as controversies regarding service conditions (art. 978);

Risk tariffs (art. 979);

Joint carrying of the cost of compensation (art. 982);

Administration of the assets of the accident association in the cases mentioned in articles 983 and 984 in combination with articles 718, 719, paragraph 1, and 720;

Collecting the contributions (arts. 1011 in connection with art. 736, pars. 2 and 3) as well as the accumulation the reserve (art. 1013);

Covering the claims of the post office department (art. 1028 in connection with arts. 781 and 782);

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Code of January 1, 1913

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Additional institutions of the accident association (art. 1029);  
Accident prevention and supervision in the cases mentioned in articles 1030 in connection with articles 848 to 889 and 890, paragraph 1, but excluding the cases mentioned in article 883;  
Reporting of the administrative authorities (art. 1033 in connection with art. 893).

#### ARTICLE 987

PARAGRAPH 1. If the matter concerns the cases mentioned below, then the Imperial Insurance Office shall decide, if an accident association which is subordinated to another State insurance office or to the Imperial Insurance Office, is affected. The State insurance office shall then transmit the documents to the Imperial Insurance Office. These cases are the following:

Controversies in regard to the assignment of several establishments to one accident association according to articles 922 and 959 in connection with article 632;

Changes in the status of the accident association in the cases mentioned in article 960;

Membership of the establishment in the accident association and changes in the membership (arts. 967 and 969 in connection with art. 673, pars. 1 and 3);

Joint carrying of the cost of compensation (art. 982).

PAR. 2. If the matter concerns any additional common institutions of several accident associations (art. 1029), then the Imperial Insurance Office shall remain competent for these additional institutions if all of the accident associations participating are not subordinated to the same State Insurance office.

### SECTION SIX.—PAYMENT OF THE COMPENSATION—RAISING OF THE FUNDS

#### I. PAYMENTS THROUGH THE POST OFFICE DEPARTMENT

##### ARTICLE 988

The provisions of the industrial accident insurance (arts. 726 to 729) are applicable in regard to the payments through the Post Office Department.

#### II. RAISING OF THE FUNDS

##### 1. *General provisions*

##### ARTICLE 989

The accident associations must raise the funds to cover their expenditures by means of membership contributions which shall cover the expenditures of the preceding fiscal year.

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Code of January 1, 1913

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*2. Standard of the labor need and of the risk classes*

## ARTICLE 990

The contributions shall be assessed according to the following:

The estimated average need for human labor (labor need) and its value in accordance with this law.

The earnings of the establishment officials and artisans as well as the annual earnings of undertakers in so far as the services of such insured persons are not already included in the estimate.

The extent of the risk of accident (risk classes).

## ARTICLE 991

PARAGRAPH 1. For each undertaker the annual average number of working days shall be estimated which are required to operate his establishment; in this connection, the number of workmen in the establishment and the duration of their employment shall be considered.

PAR. 2. The constitution may provide that household and other service shall be reckoned separately in this connection.

## ARTICLE 992

PARAGRAPH 1. In making the estimates, the list of undertakers, which was drawn up on the creation of the accident association (art. 34 of the law of May 5, 1886, Reichs-Gesetzblatt, p. 132) or drawn up at a later time, is to be used as a basis.

PAR. 2. Changes in the establishment are to be considered.

## ARTICLE 993

PARAGRAPH 1. Permanently employed workmen are to be reckoned as having 300 working days, while female employees are to be computed on the basis of the proportion of their earnings to the average annual earnings of males.

PAR. 2. The services of establishment officials, artisans, and undertakers and their relatives not insured, are not to be included in the estimate.

PAR. 3. The constitution may make other provisions.

## ARTICLE 994

In the case of establishments in which at the most five insured persons are employed regularly on full time, the constitution may specify uniform contributions according to a standard which it shall determine.

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Code of January 1, 1913

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## ARTICLE 995

The administrative bodies of the accident association shall arrange for the estimates and shall classify the establishments in risk classes. The constitution must specify the details in this connection.

## ARTICLE 996

PARAGRAPH 1. The communal authority may compel the undertakers to give information concerning the conditions which are decisive for the estimates of the labor need by the imposition of fines up to 100 marks [\$23.80].

PAR. 2. If the employer does not supply the information in due time or completely, then the communal authority shall correct the list according to their own knowledge.

## ARTICLE 997

Within two weeks the undertakers must furnish to the administrative bodies of the accident association upon demand such further information concerning conditions in their establishment and of their workmen as is required for the estimate and classification.

## ARTICLE 998

PARAGRAPH 1. The accident association shall communicate to the communal authorities lists containing the following:

The establishments belonging to it in the commune;

The important principles and the result of the estimate and classification.

PAR. 2. The communal authority must hold these lists open for inspection of persons affected for two weeks, and shall make known the beginning of the period in the manner customary in the locality.

## ARTICLE 999

Within one month after the inspection period the undertakers may make protest to the administrative bodies of the accident association which have made the estimate or classification on the following points:

Because their establishment has been included in the list or has not been included;

Because the labor need has been estimated or the establishment has been classified, or against the manner thereof.

## ARTICLE 1000

PARAGRAPH 1. The administrative bodies of the accident association

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Code of January 1, 1913

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shall communicate the decision in writing to the undertaker in regard to his protest.

PAR. 2. The undertaker may further protest to the committee of the accident association (art. 972, number 4) and may make an appeal against the decision of the latter to the superior insurance office.

#### ARTICLE 1001

In making the first estimate and classification, the members of the committee of the accident association may not participate.

#### ARTICLE 1002

Within the period in which the risk tariff is to be verified the classification and estimate are also to be verified (art. 979 in connection with art. 708).

#### ARTICLE 1003

Even before the regular reëxamination the accident association may again estimate the labor need of an establishment or reclassify the establishment if it develops that the reports of the undertaker were incorrect.

#### ARTICLE 1004

For the new estimates and new classifications, articles 990 to 1001 are correspondingly applicable.

### *3. Standard of the tax rate*

#### ARTICLE 1005

PARAGRAPH 1. If the State legislation does not exclude the relatives of the undertaker from the insurance and the standard of the labor need and the risk classes is unsuitable, then the constitution may provide that the contributions of the members of the accident association may be collected through supplementary charges to the direct State or communal taxes.

PAR. 2. For the adoption of such a provision a majority of at least two-thirds in the general meeting of the accident association is required. The constitution must in such a case also specify the manner in which those members are to be charged for the cost of the accident association who do not have to pay the taxes used as a basis, either for their whole establishment or a part thereof.

#### ARTICLE 1006

The constitution may specify the uniform minimum contributions which shall not be greater than 1 mark [23.8 cents] annually, or, if the under-

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Code of January 1, 1913

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takers themselves are insured, or are included in the insurance (arts. 925 to 928), not more than 2 marks [47.6 cents] annually.

#### ARTICLE 1007

PARAGRAPH 1. Special supplementary charges shall be collected together with the contributions on account of establishment officials and artisans. The constitution shall specify the details in this connection. It must also regulate notification of employment and threaten violations with penalties.

PAR. 2. The same applies in the case of undertakers if, for the computation of their pensions, an amount higher than the average annual earnings of agricultural workmen is used as a basis.

#### ARTICLE 1008

PARAGRAPH 1. Contributions are to be graded according to the accident risk in the case of establishments mentioned in article 917, agricultural subsidiary establishments and other establishments which, according to their nature, should be subject to the industrial accident insurance and, in addition, the activities of the kind mentioned in article 921.

PAR. 2. The constitution shall regulate the prerequisites in this connection as well as the amount of these contributions and the procedure.

#### ARTICLE 1009

PARAGRAPH 1. If the constitution specifies a land tax as the standard, then the constitution may impose the payment of the supplementary charges upon those persons who by law are subject to the land tax for the parcels of ground of establishments belonging to the association or would be subject to it if the parcels of ground had not been exempt from the tax.

PAR. 2. If, accordingly, a person other than the undertaker pays the contribution, then the latter must refund the payment.

PAR. 3. In controversies concerning such repayments the local insurance office shall decide in whose district the establishment subject to the insurance has its seat. Upon appeal the superior insurance office decides finally.

#### *4. Other standards*

#### ARTICLE 1010

PARAGRAPH 1. If the prerequisites mentioned in article 1005, paragraph 1, are present the constitution may provide for another suitable standard for the collection of the contributions, such, for instance, as the following:

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Code of January 1, 1913

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The kind of cultivation;

Area in connection with the land tax;

Net return which the ground as such, together with the buildings and outfit belonging thereto and serving the same purpose according to its previous economic use under the customary system of farming, may be made to yield continuously on an average;

The productive value which is obtained by multiplying the above return by 25.

PAR. 2. Articles 996 to 1009 are here correspondingly applicable. The constitution shall specify the details.

### *5. General provisions*

#### ARTICLE 1011

The provisions of the industrial accident insurance are applicable as to the following:

As to the purpose for which contributions may be collected and the funds may be applied (art. 736);

As to advances upon contributions as well as to advance payment of contributions (arts. 737 to 739).

#### ARTICLE 1012

PARAGRAPH 1. Undertakers of small establishments with slight accident risk, which employ for compensation persons subject to the insurance only exceptionally, may be either wholly or partly exempt from contributions by the constitution which shall at the same time specify the procedure for the ascertaining of such undertakers.

PAR. 2. With the approval of the highest administrative authority, the general meeting of the accident association may also enact the above.

PAR. 3. In controversies between the accident association and the undertaker in regard to exemption from the insurance, the superior insurance office shall decide finally.

#### ARTICLE 1013

PARAGRAPH 1. The accident associations must accumulate a reserve.

PAR. 2. Until the reserve equals twice the amount of the annual expenditures each year, 2 per cent shall be added to the current assessment. The constitution may provide for a higher amount.

PAR. 3. Articles 745 to 747 of the industrial accident insurance apply correspondingly as regards the reserve.



## III. PROCEDURE IN ASSESSMENTS AND COLLECTIONS

## ARTICLE 1014

Article 749, paragraph 1, of the industrial accident insurance applies correspondingly to the assessment of the expenditures upon members.

## ARTICLE 1015

When the assessment of the contributions is based on the tax, the tax for that period shall be used as a basis, for which the contributions are assessed.

## ARTICLE 1016

PARAGRAPH 1. When the assessment of the contribution is made according to the labor need and risk classes, each member who has in the preceding year employed establishment officials or artisans, must transmit a report to the directorate within six weeks after the expiration of the fiscal year, stating the amount actually received by each of them during this time or how much is to be included on his account.

PAR. 2. The constitution may permit a summary wage list as described in article 750, paragraph 3.

PAR. 3. The directorate of the accident association or of the sections shall themselves draw up or complete the wage list for members who do not transmit the same in due time or completely.

## ARTICLE 1017

PARAGRAPH 1. In the computation of the contributions, the following shall be used:

For an establishment official and artisan, that compensation which he is actually receiving in the establishment or which is to be reckoned for him;

For one working day of a workman, the three hundredth part of the average annual earnings as determined for adult males over 21 years of age at the seat of the establishment.

For the undertaker, the same annual earnings if the constitution does not provide otherwise.

PAR. 2. In so far as the average annual earnings exceed 1800 marks [\$428.40], the excess shall be computed at only one-third.

## ARTICLE 1018

If in making the estimates the services of establishment officials and artisans are included, according to the constitution (art. 993, par. 3), then

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Code of January 1, 1913

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only that amount of the earnings of these insured persons shall be included which is in excess of the average annual earnings of the workman.

#### ARTICLE 1019

In the cases mentioned in articles 994 and 1006 with consideration of the uniform contributions, the directorate of the accident association shall compute the contributions which are apportioned to each undertaker for the purpose of covering the total annual expenditure, and shall draw up an assessment roll.

#### ARTICLE 1020

PARAGRAPH 1. Extracts from the assessment roll are to be transmitted to each communal authority for the members belonging to its district with the request to collect the contributions after deduction of the collected advances and to send the whole sum within four weeks to the directorate of the accident association.

PAR. 2. The accident association shall on this account pay a compensation, the amount of which shall be determined by the highest administrative authority.

#### ARTICLE 1021

PARAGRAPH 1. The extract from the assessment roll must contain statements which will permit the person obligated to make the payments to verify the computation of the contribution.

PAR. 2. The communal authority shall make the extract available to the parties affected for inspection for a period of two weeks, and shall make known the beginning of this period in the manner customary in the locality. Instead of leaving the extract open for inspection, it may be transmitted to the parties affected.

PAR. 3. If the constitution provides that voluntary insurance shall be discontinued if contributions have not been paid in due time, and if it provides that a new application for membership shall be without effect until arrears of contributions have been paid (art. 929, number 2), then attention shall be called thereto either in the extract or in the communication.

#### ARTICLE 1022

Articles 755 and 756 of the industrial accident insurance are applicable in regard to a new determination of the contribution after the extract from the assessment roll has been communicated. A new determination is also permissible if on account of incorrect statements of the undertaker, the labor need at a later time has had to be newly estimated (art. 1003).

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Code of January 1, 1913

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## ARTICLE 1023

PARAGRAPH 1. Within two weeks after the expiration of the period or after communication has been made (art. 1021, par. 2) the undertaker may make protest to the directorate of the accident association against the computation of the contribution; but he remains obligated to make a provisional payment. In such cases article 757, paragraph 2, shall be applicable.

PAR. 2. The classification and the estimate may, however, not be contested. Further procedure shall be regulated by article 1000. In such cases article 759 shall be correspondingly applicable in regard to the appeal.

## ARTICLE 1024

If after the protest, appeal, or complaint, the contribution is reduced, then article 760 is applicable concerning the covering of difference and the balancing of the excess payment.

## ARTICLE 1025

If it later develops that a contribution paid without protest was either wholly or partly collected without right, then articles 1023 and 1024 shall be correspondingly applicable.

## ARTICLE 1026

If the commune can not prove that the contribution was not actually collected or that compulsory collection was without result, then it shall be liable for the contributions and must forward them at the same time.

## ARTICLE 1027

Article 762 is correspondingly applicable in regard to the raising of contributions which can not be collected. Such contributions are to be reimbursed to the commune which has already forwarded them.

## IV. TRANSFERRING AMOUNTS TO THE POST OFFICE DEPARTMENT

## ARTICLE 1028

The provisions of the industrial accident insurance are applicable as regards the transmission of the amounts to the Post Office Department (arts. 777 to 782).

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Code of January 1, 1913

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## SECTION SEVEN.—ADDITIONAL INSTITUTIONS

## ARTICLE 1029

The provisions of the industrial accident insurance (arts. 843 to 847) are applicable as regards additional institutions of the accident association.

## SECTION EIGHT.—ACCIDENT PREVENTION—SUPERVISION

## ARTICLE 1030

PARAGRAPH 1. Articles 848 to 857, 859 to 889, 890, paragraph 1, and 891, paragraph 2, of the industrial accident insurance are correspondingly applicable as regards prevention of accidents and supervision.

PAR. 2. The representatives of the insured persons shall be elected by the insurance representatives of those local insurance offices whose district is covered by the accident association or the section. However, only such insurance representatives of the local insurance offices are eligible as have been selected as representatives of the insured persons and who belong within the sphere of the agricultural insurance.

## ARTICLE 1031

PARAGRAPH 1. If State authorities or autonomous bodies administer the accident associations, they shall summon for discussion and for decision as to regulations for the prevention of accidents a like number of employers and representatives of the insured persons.

PAR. 2. The representatives of the employers shall be selected by lot, drawn by the chairman from the number of the employers' associates engaged in agriculture who are attached to the superior insurance offices of the district of the accident association, and the selection shall be made in a session of the autonomous bodies or of the authority.

PAR. 3. For these representatives articles 861 and 863 shall be correspondingly applicable; for them and their substitutes, the provisions of articles 16 to 21 and 24 shall also be applicable as far as concerns representatives of the employers.

## ARTICLE 1032

Undertakers are required to permit the members of the administrative bodies of the accident association who have been designated for this purpose by their accident association to enter their places of work during working hours. Article 879 is here correspondingly applicable.

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Code of January 1, 1913

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## SECTION NINE.—ESTABLISHMENTS OF THE EMPIRE AND OF THE STATES

## ARTICLE 1033

PARAGRAPH 1. If the Empire or a federal State is a carrier of the insurance, then articles 892, 893, and 895 to 897 of the industrial accident insurance shall be applicable.

PAR. 2. In this case, the following provisions of the agricultural accident insurance shall not apply:

The provisions in regard to changes in the status of the accident associations (arts. 960 and 961);

The provisions concerning the constitution contained in articles 962 to 983 and 984 in connection with articles 718 to 720;

The provisions in regard to supervision (arts. 985 to 987);

The provisions relating to raising funds as well as concerning the procedure of assessment and collection (arts. 989 to 1027);

Article 1028 in connection with articles 781 and 782 of the provisions in regard to transmitting amounts to the Post Office Department;

The provisions in regard to additional institutions (art. 1029);

Article 1030 in connection with articles 848 to 887, 889, 890, paragraph 1, and 891, paragraph 2, as well as articles 1031 and 1032 of the provisions in regard to accident prevention and inspection.

Articles 1043, 1044, and 1045 in connection with articles 910, 912, and 913 of the penal provisions.

PAR. 3. In place of the constitution, the administrative regulations shall specify who shall be considered as artisans.

## SECTION TEN.—REGULATION BY STATE LEGISLATION

## ARTICLE 1034

The State legislation may specify how far and under what conditions the two steps named below may be taken. Additional provisions of the constitution as regards the first case below are thereby not excluded. These two cases are—

1. How far and under what conditions undertakers, including consorts, may be insured;
2. How far and under what conditions other relatives of the undertaker shall be exempt from insurance.

## ARTICLE 1035

PARAGRAPH 1. The State legislation may also either wholly or partly exempt undertakers from the payment of contributions on account of the

## Code of January 1, 1913

slight risk of accident or the small scope of the establishment, and shall specify the procedure for the ascertaining of such undertakers.

PAR. 2. In controversies between the accident association and the undertaker in regard to such exemption, the superior insurance office shall decide finally.

## ARTICLE 1036

The State legislation may also prescribe higher reserves (art. 1013).

## ARTICLE 1037

The State legislation may regulate the following five subjects at variance with the provisions of this law specified below. The following are these five subjects:

- The delimitation of the accident associations;
- The constitution and administration of associations;
- The procedure in case of change in the establishment;
- The standard for the assessment of contributions;
- The procedure in assessment and collection.

The provisions which may be departed from are the following:

- Articles 5 to 7 in regard to administrative bodies;
- Articles 12, 13, 14, paragraph 2, sentence 2, articles 17 to 21, 23, and 24 in regard to honorary offices;
- Article 28, paragraphs 1 and 2, and article 29, paragraphs 1 and 2, in regard to assets;
- Article 967 in regard to reporting of establishments;
- Articles 968, 969, in connection with articles 665, 666, 667, paragraph 2, and articles 669 to 672 as well as article 970 in regard to change of the undertaker, to reporting changes in the establishment and in regard to additional procedure;
- Articles 971 to 974 in regard to the constitution.
- Article 975, paragraph 1, in connection with articles 685, 686, Nos. 3 and 4, and 687 to 689, and also article 976, paragraph 1, and article 977, paragraph 1, in regard to the administrative bodies of the accident association.
- Article 978 in regard to employees of the accident association.
- Article 979 in regard to the formation of risk classes.
- Articles 980 to 982 in regard to dividing and the joint carrying of the cost.
- Articles 990 to 1010 in regard to raising the funds.
- Articles 1014 to 1027 in regard to the procedure in assessment and collection.

In addition the State legislation may change various provisions of this law and enact the following:

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Code of January 1, 1913

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Designate the administrative bodies which shall administer the accident association and take cognizance of the rights and duties which this law imposes upon directorates.

Transfer the investigation of the circumstances of the accident to the local insurance office.

#### ARTICLE 1038

If the State legislation contains provisions based upon the authorization of article 1037, it shall also specify the following:

1. The representation of the accident association in the investigation of accidents (art. 1562).
2. The administrative body with which the claim for compensation shall be filed (arts. 1546, 1548, 1584, and 1585) and which shall determine the compensation and issue the decision or final decision thereon (arts. 1568, 1569, 1583, and 1606).
3. The administration of the assets (art. 25, par. 2, arts. 26, 27, 983 and 984 in connection with arts. 718 to 720).
4. The persons, excepting the technical supervisory officials and the special experts (art. 1030 in connection with arts. 875, 880, 881), who are subject to the penal provisions concerning the violation of trade secrets (arts. 142 to 144).

#### ARTICLE 1039

If by any State legislation use is made of the right to delimit accident associations, then in the case of changes in the status of the accident associations the highest administrative authority shall take the place of the Federal Council if the establishments affected all have their seat in the Federal State.

#### ARTICLE 1040

PARAGRAPH 1. If an accident association created under the State law is to be dissolved on account of insolvency, and its establishments apportioned to other accident associations whose establishments all have their seats in the federal State, then the highest administrative authority of that State shall be competent as regards dissolution and apportionment.

PAR. 2. Upon dissolution of the accident association its rights and duties are assumed by the federal State.

#### ARTICLE 1041

PARAGRAPH 1. If a federal State has joined its territory, either wholly or partly, to the accident association of a second State with the consent thereof, and the latter has made use of the right granted in article 1037,

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Code of January 1, 1913

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then for this accident association the provisions of the State laws of the designated second State shall be applicable.

PAR. 2. If the State included has also made use of its rights under article 1037, then the provisions of the federal State in which the accident association has its seat shall be applicable. The two State governments shall agree on the seat of the association.

PAR. 3. If the Federal Council dissolves an accident association of this kind as being insolvent, then the rights and duties of the association shall be transferred to the Federal States affected according to the proportion of the contributions which were paid in the last fiscal year.

PAR. 4. If the federal States affected can not agree on these matters, the Federal Council shall decide the matter upon appeal.

#### SECTION ELEVEN.—LIABILITY OF UNDERTAKERS AND THEIR REPRESENTATIVES

##### ARTICLE 1042

PARAGRAPH 1. The provisions of the industrial accident insurance (arts. 898 to 907) are applicable as regards the liability of undertakers and their representatives.

PAR. 2. Claims for reimbursement for damages suffered through accident, which the insured person has according to law for the first 13 weeks after the accident, are retained if the insured person does not have a claim to the benefits of sickness insurance from a sick fund, a miners' sick fund, or a substitute fund, or is exempt from insurance because of being entitled to benefits of equal value.

#### SECTION TWELVE.—PENAL PROVISIONS

##### ARTICLE 1043

PARAGRAPH 1. The directorate of the accident association may impose upon undertakers fines up to 500 marks [\$119] if the four classes of reports specified below contain statements of facts which the undertakers knew to be incorrect or under the circumstances must have been aware of the fact. These are the following:

1. Lists of salaries or wages which must be handed in according to article 1016 for the purpose of the assessment of the contribution;
2. Explanations which must be transmitted to the competent officials of the accident association for the purpose of apportioning the establishment to the risk classes;



## Code of January 1, 1913

3. Reports which they have furnished according to article 996 for estimating the labor need or according to article 997, in regard to conditions of their establishment and their labor force;
4. Reports or notices which they have furnished according to article 968 concerning the change of the undertaker or according to articles 969 and 970 concerning changes in the establishment.

PAR. 2. Paragraph 1 is correspondingly applicable as regards reports, explanations, and information which undertakers must give for the apportionment of the contributions under the standard specified in article 1010.

## ARTICLE 1044

The directorate of an accident association may in addition impose fines up to 300 marks [\$71.40] upon undertakers if they do not in due time comply with the following obligations:

1. Transmit the statements designated in article 1043, paragraph 1, numbers 1, 3, and 4 and paragraph 2;
2. Comply with the provisions of the constitution in regard to the shutting down of establishments and changes of undertakers.

## ARTICLE 1045

The following provisions of the industrial accident insurance are correspondingly applicable:

Article 910 concerning the protest against the determination of fines by the directorates of the accident association;

Article 911 concerning the deduction of the contributions from the earnings;

Article 912 in regard to the punishment of persons of equal status with undertakers;

Article 913 concerning penalties in the case of transfer of the obligations of undertakers;

Article 914 concerning the funds to which the fines accrue.

## PART THREE

## NAVIGATION ACCIDENT ASSOCIATION

## SECTION ONE.—SCOPE OF THE INSURANCE

## ARTICLE 1046

The following persons are insured against accident:

1. If they are employed upon seagoing vessels as masters, seamen, engineers, stewards, or belonging to the ship's crew in another

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Code of January 1, 1913

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capacity (seamen); masters are included, however, only if they are employed for a compensation;

2. If they are employed upon German seagoing vessels in inland harbors or upon inland canals or streams without belonging to the ship's crew, provided they are not otherwise insured against accident upon the basis of the imperial insurance;
3. If they are employed in inland establishments conducting floating docks and similar operations as well as in German establishments for pilot service, for the rescue or salvage of men or commodities in case of shipwreck, for the watching, lighting, or maintenance of waters for the service of marine traffic.

## ARTICLE 1047

A sea voyage (art. 163) includes the following:

1. A voyage upon the sea outside of the limits specified in article 1 of the administrative provisions of November 10, 1899, in connection with article 25 of the flag law of June 22, 1899;
2. Voyages upon bays, inclosed bays (*Haffen*), and shoals of the sea.

## ARTICLE 1048

Voyages upon other waters which are connected with the sea are not considered as sea voyages, even if made by seagoing vessels.

## ARTICLE 1049

The crews of vessels which are used for fishing of the kind described in article 1048, within the limits determined by the Federal Council, are also insured against accident.

## ARTICLE 1050

If it is doubtful whether establishments are subject to the navigation accident insurance, then the Imperial Insurance Office shall decide thereon after a hearing of the directorate of the accident association.

## ARTICLE 1051

The navigation accident insurance is not applicable to establishments engaged in marine navigation and other establishments included in articles 1046 and 1049 which, because they are important parts of another establishment, are subject to the industrial accident insurance (art. 540, No. 2).

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Code of January 1, 1913

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## ARTICLE 1052

PARAGRAPH 1. The insurance applies to accidents during operations, inclusive of accidents which occur during these operations and which are caused by natural events (industrial accidents).

PAR. 2. Acts contrary to regulations do not exclude the assumption of a trade accident.

## ARTICLE 1053

The insurance is in force for the time from the beginning to the end of the service relation, including transportation from land to vessel and from vessel to land.

## ARTICLE 1054

The insurance also covers the following:

1. Accidents during operations to persons insured according to articles 1046 and 1049 sustained upon a vessel subject to the navigation accident insurance upon which they are employed, but to whose crew they do not belong.
2. Accidents to German seamen during free return transportation, or transportation upon German seagoing vessels which is granted to them in accordance with the Commercial Code or Navigation Code (Reichsgesetzblatt, 1902, p. 175), or according to the law relating to the obligation of vessels in the merchant marine as to returning seamen to home ports (Reichsgesetzblatt, 1902, p. 212).

## ARTICLE 1055

In the case of change of flag, the service relation is regarded as ended on that date on which the insured person may ask for his discharge. The change of flag is to be communicated to the insured persons. The communication must be entered in the ship's log by the captain, and the insured persons must attest the entry.

## ARTICLE 1056

Excluded from insurance are accidents sustained by the insured person in the following cases:

1. While he is not on board contrary to orders;
2. While he is on land on leave for his private affairs.

## ARTICLE 1057

The insurance also includes the following:

1. Household and other service to which the insured persons who are principally engaged in the establishment have been assigned by the undertaker or by his representatives.

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Code of January 1, 1913

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2. Service rendered by insured persons in connection with the rescue or salvage of men or goods.

#### ARTICLE 1058

The undertakers of individual establishments are also insured in the following cases:

1. In sea navigation, if the seagoing vessel has not more than 50 cubic meters [65.40 cubic yards] total capacity, and has neither the appurtenances of larger seagoing vessels nor is arranged to be driven by steam or other machine power.
2. Fishing on the high seas with vessels which the Federal Council has not already, in accordance with article 1, paragraph 5, of the law of July 13, 1887 (Reichs-Gesetzblatt, p. 329), placed under the accident association as being steamers engaged in deep-sea fishing or as being herring luggers.
3. Fishing of the kind designated in article 1049.

PAR. 2. The insurance obligation of the undertaker exists only if he belongs to the crew of the vessel, and in the establishment there is regularly employed for compensation either no one or at the most two persons subject to the insurance.

#### ARTICLE 1059

The constitution may also extend the insurance obligation to shipowners who belong to the crew of the vessel, and when in the establishment there is regularly employed for compensation either no one or at the most two persons subject to the insurance.

#### ARTICLE 1060

The proprietor of a seagoing vessel is the shipowner (*Reeder*), or if a shipowning firm (*Reederei*) exists, then the firm itself (art. 489 of the Commercial Code).

#### ARTICLE 1061

Such undertakers of insured establishments which are not already insured according to these provisions, and pilots who carry on their business on their own account, can insure themselves against the consequences of industrial accidents.

#### ARTICLE 1062

The provisions of articles 1058, 1059, and 1061 in regard to the insurance of the undertaker are also applicable for consorts employed in the establishment.

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Code of January 1, 1913

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## ARTICLE 1063

The insurance covers the annual earnings up to 5,000 marks [\$1,190], inclusive. The constitution may extend the insurance beyond this sum.

## ARTICLE 1064

The following articles of the industrial accident insurance are correspondingly applicable:

1. Article 552 for the insurance of other employees in the establishment and strangers in the establishment.
2. Article 553 for the consequences of failure to make prompt payment of contributions in the case of voluntary insurance.
3. Article 554 for the insurance of persons in military service and of officials.

## SECTION TWO.—BENEFITS OF THE INSURANCE

## ARTICLE 1065

PARAGRAPH 1. Articles 555 to 562 of the industrial accident insurance are correspondingly applicable as regards the benefits of the insurance; contraventions of article 93, paragraphs 2 and 3 and of articles 95 to 97 of the Navigation Code are not considered as misdemeanors in the meaning of article 557, paragraph 1.

PAR. 2. In so far as there is a legal obligation of the shipowner to provide sick relief, then the obligation to provide compensation by the accident association shall begin when the obligation of the shipowner ends.

## ARTICLE 1066

In computing the pension of insured persons who belong to the accident association (art. 1118) the annual earnings are to be determined according to articles 1067 to 1079, 1081 and 1082.

## ARTICLE 1067

With the exception of persons employed in establishments engaged in towing and lighterage, the average rate of monthly cash wages (*Heuer*) at the time of the accident granted on the mustering in or registering, multiplied by 11, shall be considered as the annual earnings of persons who belong to the crew of seagoing vessels; to this amount shall be added two-fifths of the average cash value of the board provided for able-bodied seamen on seagoing vessels.

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Code of January 1, 1913

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## ARTICLE 1068

PARAGRAPH 1. The average monthly rate shall be determined by the imperial chancellor after a hearing of the highest administrative authority on a uniform basis for the whole German coast, and it shall be fixed according to the wage rates which able-bodied seamen on German vessels have received during the last three calendar years in which the German naval forces have not been mobilized.

PAR. 2. For those classes of the ship's crew who in addition to the wage or salary have a regular supplementary income, the average money value or such income shall also be included in fixing the average rate above referred to.

## ARTICLE 1069

The average rate shall be established separately for able-bodied seamen, steersmen, engineers, and other ship's officers, and for masters. It may also be graded further according to the type of the vessels or according to classes of the ship's crew.

## ARTICLE 1070

In the case of persons of the ship's crew for whom no special average has been determined, three-fourths of the rate determined for able-bodied seamen shall be used.

## ARTICLE 1071

The determination of the average rates shall be reexamined at least every five years.

## ARTICLE 1072

After the expiration of the seventeenth year of life, the pension is to be increased to the average rate for ordinary seamen, and after the expiration of the nineteenth year of life to the rate for able-bodied seamen: *Provided*, That it had been computed according to a lower average rate.

## ARTICLE 1073

In so far as the annual earnings exceed 1,800 marks [\$428.40] the excess shall be computed at only one-third.

## ARTICLE 1074

PARAGRAPH 1. Articles 563 to 566 and 568 of the industrial accident insurance are applicable as concerns the annual earnings of the other persons insured according to article 1046 who belong to the accident association.

PAR. 2. In this connection, articles 1075 to 1078 and 1082 are also applicable.

#### ARTICLE 1075

If the customary number of working days of operation in the year is so small that those employed in the establishment regularly perform work elsewhere for compensation in addition, then in the cases specified in articles 565 and 566 the number of working days necessary to make up the 300 shall be added to the amount computed according to article 565 or 566, using the local wages which at the time of the accident have been determined for the place of employment of the insured person (arts. 149 to 152).

#### ARTICLE 1076

Articles 1074 and 1075 are correspondingly applicable if the annual earnings are composed of the amounts specified at not less than weekly rates.

#### ARTICLE 1077

If the annual earnings as computed according to articles 1074 to 1076 do not equal 300 times the local wage rate (art. 1075), then 300 times the local wage rate shall be considered as the annual earnings.

#### ARTICLE 1078

The pension for injured young persons, which shall be computed according to the local wage rate, shall be fixed at first according to the age class in which they were when the accident occurred, and is to be correspondingly increased for them as they go into the higher wage class.

#### ARTICLE 1079

The constitution must contain provisions in regard to obtaining the annual earnings of undertakers and of pilots as well as other persons employed in the establishment, and strangers in the establishment who belong to the accident association (art. 1064, No. 1). In so far as the annual earnings exceed 1,800 marks [\$428.40], the excess shall here also be computed at only one-third.

#### ARTICLE 1080

In computing the pension of insured persons who belong to a branch institute (art. 1120) the annual earnings shall be taken as equal to 300 times the local wage rate which was established at the time of the accident for the seat of the establishment. In the case of young persons the pensions shall be increased as specified in article 1078.

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Code of January 1, 1913

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## ARTICLE 1081

If the accident occurs to a person already permanently partially disabled whose pension is based on the average monthly rate as above determined (art. 1068), then only that part shall be used as a basis which corresponds to the degree of earning power previous to the accident.

## ARTICLE 1082

The local wage rate for persons already permanently partially disabled shall be considered as only that part thereof which corresponds to the degree of earning power previous to the accident.

## ARTICLE 1083

If the injured person is insured against sickness on the basis of the imperial insurance or in a miners' sick fund, then articles 573 to 576 and 578 of the industrial accident insurance shall be correspondingly applied for relief during the first 13 weeks after the accident. In such cases contravention of article 93, paragraphs 2 and 3, and articles 95 to 97 of the Navigation Code are not to be considered as misdemeanors in the meaning of article 557, paragraph 1.

## ARTICLE 1084

If the persons insured under articles 1046 and 1049 are not insured on the basis of the imperial insurance or in a miners' sick fund and also have no legal claim against the shipowner for sick relief during the first 13 weeks after the accident, then the undertaker must grant relief during this time. This does not apply in the case of insured persons whose annual earnings exceed 2,500 marks [\$595].

## ARTICLE 1085

PARAGRAPH 1. The amount of relief to be provided by the undertaker shall be based on the following:

1. In the case of seamen according to articles 553 and 553a of the Commercial Code and articles 59 to 61 of the Navigation Code.
2. In other cases according to article 577, and paragraph 1, article 578 of the industrial accident insurance.

PAR. 2. Article 576 is correspondingly applicable as regards a claim for reimbursement of the undertaker against the accident association.

PAR. 3. The employer or carrier of the other relief under article 577, paragraphs 2 and 3, shall take the place of the undertaker.



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Code of January 1, 1913

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## ARTICLE 1086

PARAGRAPH 1. The accident association can assume either wholly or partly the benefits to be paid by the undertaker.

PAR. 2. In the case of seamen the undertaker must reimburse the expenses of the accident association. In such case reimbursement for the cost of medical treatment (art. 553 of the Commercial Code and art. 59 of the Navigation Code) shall be one-half of the amount which would have to be expended for institutional care at the seat of the competent section.

PAR. 3. In the case of persons other than seamen article 579, paragraph 1, sentences 2 and 3, shall be applicable to the reimbursement.

PAR. 4. This provision shall be correspondingly applicable if in the cases mentioned in article 1085, paragraph 3, in connection with article 577, paragraphs 2 and 3, the employer or carrier of the other relief takes the place of the undertaker.

## ARTICLE 1087

PARAGRAPH 1. In the case of injured persons who belong to a branch institute relief for the first 13 weeks after the accident shall not be based according to articles 1083 to 1086.

PAR. 2. In the case of such injured persons the commune in whose district the establishment has its seat must grant sick benefits according to article 182. In the place of sick benefits it may grant hospital care and house money according to articles 184 and 186; with the consent of the injured person it may also grant care according to article 185, paragraph 1, and deduct up to one-fourth of the pecuniary sick benefits therefor. The local wage rate of the seat of the establishment shall be used as basic wage.

## ARTICLE 1088

PARAGRAPH 1. The commune is not required to provide sick benefits according to article 1087 in the following cases:

1. In so far as the injured person has a claim for similar relief on the basis of the sickness insurance or other legal provisions.
2. If he is exempt from insurance on the basis of benefits which are of equal value with the sickness insurance.
3. As long as he remains in a foreign country.

PAR. 2. If those first obliged to do so do not provide the injured person with the sick benefits, then the commune shall assume such provision. The expenditures for this purpose must be repaid to the commune by those obliged to make such provision.

PAR. 3. In such cases the compensation for the sick care as well as in the case of treatment in a hospital shall be equal to three-eighths of the basic

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Code of January 1, 1913

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wage according to which the pecuniary sick benefits of the beneficiary are computed, and in the case of maintenance in a hospital one-half of the basic rate. If no other basic wage is specified, then the local wage rate of the seat of the establishment shall be used.

## ARTICLE 1089

PARAGRAPH 1. Upon demand of the commune for general local sick fund, or, in the absence of such, the rural sick fund of the place of residence or abode, shall take upon itself the providing of the sick benefit.

PAR. 2. Expenditures on this account shall be reimbursed by the commune. In such cases if a higher expenditure is not shown, article 1088, paragraph 3, shall be applicable.

## ARTICLE 1090

PARAGRAPH 1. The branch institute may take upon itself the provision of medical treatment (art. 1087).

PAR. 2. The commune, or under the reservation of articles 1513 and 1516 those otherwise obliged to so do (art. 1088, par. 1, Nos. 1 and 2), shall reimburse the branch institute in so far as the injured person had a claim upon them for benefits. In such cases article 1088, paragraph 3, is applicable.

## ARTICLE 1091

PARAGRAPH 1. The relief of the injured person may be transferred by the branch institute to the commune, which is obliged to provide sick benefits for the first 13 weeks, or to the sick fund (art. 1089) until the end of the course of treatment.

PAR. 2. The branch institute must reimburse the commune or the sick fund for the expenditure on this account. In such cases article 1088, paragraph 3, shall be applicable unless a higher expenditure is shown.

## ARTICLE 1092

PARAGRAPH 1. If, in the case of persons who are not insured against sickness on the basis of the imperial insurance or with a miners' sick fund, and also do not have a claim for sick relief according to article 1087, it is to be feared that an accident compensation will have to be provided for, the accident association may inaugurate a course of treatment even before the expiration of the first 13 weeks after the accident in order to remove the consequences of the accident or to alleviate the same.

PAR. 2. The association may place the insured person in a medical institution. In such cases article 597, paragraphs 2 to 4, is applicable.

## Code of January 1, 1913

PAR. 3. The association, with his consent, may grant the injured person care according to article 185, paragraph 1.

PAR. 4. The injured person may demand from the accident association a proper reimbursement for the earnings which he has lost on account of the course of treatment.

## ARTICLE 1093

Even without granting the injured person a course of treatment, the accident association may investigate the consequences of the accident within the first 13 weeks. Article 581, paragraph 1, is here correspondingly applicable.

## ARTICLE 1094

Articles 582 and 583, paragraph 1, and article 584 are applicable in regard to—

The granting of the accident pension before the expiration of the 13 weeks.

The transfer of the claim for pecuniary sick benefit before the expiration of the 13 weeks.

The liability of the accident association for the attitude of the carrier of the sickness insurance before the expiration of the 13 weeks.

In such cases article 583, paragraph 1, is also applicable for the payments of the commune (art. 1087).

## ARTICLE 1095

In fatal cases, the following must in addition be granted:

1. A funeral benefit according to articles 1096 and 1097.
2. A pension to the survivors beginning with the date of death.

## ARTICLE 1096

PARAGRAPH 1. The funeral benefit shall be granted in the following cases:

1. If the shipowner does not have to bear the cost of burial according to article 554 of the Commercial Code or article 64 of the Navigation Code (*Seemannsordnung*);
2. If the deceased was buried on land.

PAR. 2. Article 203 is here correspondingly applicable.

## ARTICLE 1097

PARAGRAPH 1. The funeral benefit shall consist of the following amount:

1. When paid by the accident association,

## Code of January 1, 1913

- a. For seamen, two-thirds of the monthly average rate (arts. 1067 to 1073);
  - b. For other persons, the fifteenth part of the annual earnings. This amount shall be computed in the same manner as in the case of bodily injury; however, in such cases, article 1082 does not apply;
2. When paid by the branch institute, 20 times the local wage rate according to article 1080.
- PAR. 2. In all cases, however, the funeral benefit shall be at least 50 marks [\$11.90].

## ARTICLE 1098

PARAGRAPH 1. The pension to the survivors shall consist of a fraction of the annual earnings (arts. 1067 to 1073, 1097 par. 1, No. 1b and art. 1080).

PAR. 2. In other cases, articles 588 to 596 of the industrial accident insurance are applicable in this respect; in such cases remaining on board a German ship, shall be considered the same as an abode in Germany.

## ARTICLE 1099

PARAGRAPH 1. If the insured person has gone to sea on a vessel, then his survivors also have a claim to the pension if the vessel has sunk or according to articles 682 and 683 of the Commercial Code is regarded as missing, and during one full year after its sinking or after the last news of the vessel, no trustworthy information concerning the existence of the person missing has been received.

PAR. 2. The local insurance office may demand a solemn assurance from the survivors that they have received no other information regarding the existence of the missing person than that declared.

## ARTICLE 1100

PARAGRAPH 1. In such cases, the pension shall begin on the day of the sinking of the vessel, or if it is missing, one-half a month after the date up to which the latest news of the vessel reaches (art. 53 of the Navigation Code).

PAR. 2. The claim to further receipt of the pension shall cease if it is proved that the person believed to be dead is still alive.

## ARTICLE 1101

PARAGRAPH 1. If on account of a previous accident, the annual earnings (art. 1097, par. 1, No. 1b and art. 1080) are smaller than the wages

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Code of January 1, 1913

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received before the earlier accident, then the previous pension is to be added to the annual earnings; in such cases, however, that amount may not be exceeded which, as annual earnings, was used as the basis for the previous pension.

PAR. 2. This shall not apply if the pension was computed according to the monthly average as determined above (art. 1068).

ARTICLE 1102

PARAGRAPH 1. The accident association may grant treatment in a medical institution in place of sick treatment and pension (art. 1065 in connection with art. 558). In such cases, article 597, paragraphs 2 to 5, and article 598 are applicable.

PAR. 2. With the consent of the injured person, the accident association may grant free medical treatment and maintenance on board a vessel instead of treatment in a medical institution.

ARTICLE 1103

Article 599 is applicable in regard to home care.

ARTICLE 1104

PARAGRAPH 1. If the accident association, according to article 1086, assumes the benefits of the undertaker, then in place of the relief designated in articles 1084 and 1085, it may grant care and maintenance in a hospital as well as grant house money according to articles 186 and 577, paragraph 1, in the cases mentioned in article 1085, paragraph 1, No. 2. In this connection, article 1102, paragraph 2, shall be correspondingly applicable.

PAR. 2. In the case of seamen, the undertaker must reimburse that amount for treatment and care which would have to be expended for treatment in a medical institution at the seat of the competent section.

PAR. 3. For persons other than seamen, the reimbursement mentioned in article 579, paragraph 1, sentences 2 and 3, is to be used.

PAR. 4. This provision is to be correspondingly applicable when in the cases mentioned in articles 1085, paragraph 3, in connection with article 577, paragraphs 2 and 3, the employer or carrier of the other relief takes the place of the undertaker.

PAR. 5. With the consent of the insured person, the accident association may grant care according to article 185, paragraph 1, and deduct up to one-fourth of the pecuniary sick benefit therefor.

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Code of January 1, 1913

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## ARTICLE 1105

Article 602 is applicable for special relief, when the injured person is placed in a medical institution.

## ARTICLE 1106

PARAGRAPH 1. The accident association may transfer the fulfillment of its duties toward the injured person and his relatives, to the undertaker who had or still has the duty of providing relief for the first weeks after the accident, and these duties may be transferred to the end of the medical treatment to any extent which the association deems advisable. This does not apply if the establishment is insured in the branch institute.

PAR. 2. The association must reimburse the undertaker for expenses arising herefrom. As reimbursement, there must be granted, computed on the basis of the year for the benefits which correspond to the sick care (art. 558, No. 1), three-eighths of the annual earnings (arts. 1067 to 1073, 1097, par. 1, No. 1b) and in addition in the case of care in a medical institution or treatment or maintenance on board a vessel, there must be granted one-half of the annual earnings for maintenance, if a higher expenditure is not shown to have been made.

## ARTICLE 1107

PARAGRAPH 1. If controversies arise in a foreign country in regard to free medical treatment and maintenance in a hospital or on board a vessel, then that consular office (*Seemannsamt*) which shall be first appealed to, shall render the provisional ruling. Each party must follow the order of the consular office (*Seemannsamt*) until the decision of the competent office is rendered.

PAR. 2. Exemption from fees and stamp taxes (arts. 137 and 138) is here also applicable.

## ARTICLE 1108

PARAGRAPH 1. The marine office (*Seemannsamt*) shall decide in controversies concerning claims of seamen based on articles 1083 to 1086, 1092, and 1104 as well as from article 1106: *Provided*, That this controversy must not be settled by the determination procedure of the accident insurance. The marine office (*Seemannsamt*) shall also decide controversies concerning claims of seamen to pecuniary sick benefits which, according to article 1094, have been transferred to the accident association.

PAR. 2. If the matter concerns the granting of relief, the marine office which is first appealed to shall be competent, if the matter concerns reimbursement, the marine office of the home port.

PAR. 3. Exemption from fees and stamp taxes is here also applicable.

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Code of January 1, 1913

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## ARTICLE 1109

PARAGRAPH 1. The decision of the marine office (*Seemannsamt*) shall have the same status as the judgment of the local insurance office; the appeal does not effect a stay if the matter concerns the granting of relief.

PAR. 2. In the second instance that superior office insurance is competent in whose district the vessel has its home port or if there is no German home port, then the district in which the establishment has its seat.

PAR. 3. In regard to the point as to whether a review is permissible, the claims designated in article 1108, paragraph 1, shall be considered as claims for benefits of sickness insurance.

## ARTICLE 1110

PARAGRAPH 1. In controversies between the undertaker and the accident association in regard to transferring their benefits (art. 1106), the local insurance office shall decide finally if the matter does not concern a claim for reimbursement.

PAR. 2. Controversies in regard to claims for reimbursement arising out of articles 1083 to 1086, 1104, and 1106 shall be decided in judgment procedure.

## ARTICLE 1111

PARAGRAPH 1. In controversies between a commune and a sick fund in regard to assuming sickness benefits (art. 1089) as well as in controversies between the branch institute and the commune or sick fund in regard to the transfer of the relief (art. 1091) the local insurance office shall decide finally if the matter does not concern a claim for reimbursement.

PAR. 2. Controversies in regard to reimbursement arising out of articles 1088 to 1091 shall be decided in judgment procedure.

## ARTICLE 1112

Articles 603 and 604 of the industrial accident insurance and article 1106 shall be applicable in regard to a new course of treatment.

## ARTICLE 1113

Article 605 is applicable concerning changing the medical institution. However, in the case of seamen in foreign hospitals, the consular office (*Seemannsamt*) in whose district this hospital is located, replaces the consent of the seamen.

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Code of January 1, 1913

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## ARTICLE 1114

The provisions of the industrial accident insurance are applicable concerning the following:

Harm to the injured person because of improper conduct in violation of the rules relating to the medical treatment (art. 606);

Placing the pensioner in a home for invalids or similar institution (art. 607).

## ARTICLE 1115

In addition the provisions of the industrial accident insurance are applicable in regard to the following:

A new determination of the pension on account of a change in conditions (arts. 608 to 611);

The maturity of the pension and duration of the receipt of the pension (arts. 612 and 613);

The right to receive the benefits after the death of the person entitled thereto (art. 614);

The suspension of the pension in the case of penalty involving the loss of liberty or confinement in a workhouse or reformatory (art. 615, par. 1, No. 1, and par. 4.)

## ARTICLE 1116

PARAGRAPH 1. The right to receive the pension shall be suspended as long as the beneficiary—

1. Does service on a foreign war vessel;
2. Without having been mustered in on a German vessel, voluntarily and regularly abides in a foreign country and neglects to do the following:

Notify the accident association of his abode;

As an injured person presents himself at a marine office from time to time upon demand of the accident association.

The Imperial Insurance Office shall specify the details in regard to notifying the association and presenting himself.

If the beneficiary proves that without any fault of his own he has failed to make the prescribed report and presentation, then to that extent his right to a pension shall be revived.

3. As a foreigner, has been expelled from the Empire, because of condemnation in a penal procedure. The same applies in the case of a foreigner entitled to benefits who because of condemnation in a penal procedure has been expelled from the territory of a federal State so long as he does not stay in another federal State.



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Code of January 1, 1913

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The Federal Council can suspend the cessation of pensions for foreign border territories, or for subjects of such foreign States whose legislation grants corresponding relief for Germans and their survivors.

PAR. 2. If the expulsion of a foreigner entitled to benefits (par. 1, No. 3) has not been ordered on the basis of condemnation or because of condemnation in a penal procedure, then in his case paragraph 1, No. 2, shall apply.

PAR. 3. In the meaning of these provisions German protectorates shall be considered as part of the Empire.

#### ARTICLE 1117

The provisions of the industrial accident insurance are also applicable concerning the following:

Settlements in the form of capital sums (arts. 616 to 618);

Relinquishment of a claim for reimbursement and of legal rights (arts. 619 and 620);

Transferring, assigning, execution of the claims, and deductions from the claims (arts. 621 and 622).

#### SECTION THREE.—CARRIERS OF THE INSURANCE

#### ARTICLE 1118

The accident association as a carrier of the insurance includes the undertakers of insured establishments which are not insured in the branch institute (art. 1120).

#### ARTICLE 1119

PARAGRAPH 1. The Empire or a federal State is the carrier of the insurance if the establishment is conducted for its account. This shall not apply whenever the Empire or the federal State, through a declaration of the imperial chancellor or highest administrative authority, enters the accident association. The declaration of entrance shall also specify the date on which such entrance shall become effective.

PAR. 2. Article 627, paragraph 2, shall be applicable as regards withdrawal from the accident association and reentrance into the same; article 625, paragraphs 3 to 5, of the industrial accident insurance shall also be applicable as regards withdrawal.

#### ARTICLE 1120

The three kinds of establishments designated below shall be insured in a special branch institute which shall be attached to the accident associa-

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Code of January 1, 1913

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tion. The accident association shall be the carrier of the branch institute. The three groups of establishments are the following:

1. Establishments engaged in navigation on the high seas with vessels of the kind designated in article 1058, paragraph 1, No. 1 (small-scale establishments engaged in navigation);
2. Establishments engaged in fishing on the high seas with vessels which the Imperial Council has not already placed under the accident insurance as being either steamers engaged in deep-sea fishing or herring luggers (art. 1058, par. 1, No. 2);
3. Establishments engaged in fishing with vessels of the kind described in article 1049.

#### ARTICLE 1121

The undertaker shall be considered as that person for whose account the establishment is conducted; in the case of navigation establishments this shall be the shipowner.

#### ARTICLE 1122

PARAGRAPH 1. The following provisions of the industrial accident insurance shall be applicable:

Article 630, paragraph 3, concerning the maintenance of the status of the accident association;

Article 634 concerning the compensation of accidents in establishments of other parties;

Article 647, paragraphs 1 and 3, concerning the dissolution of the accident association.

PAR. 2. The official bodies of the dissolved accident association shall wind up the affairs under supervision of the Imperial Insurance Office.

### SECTION FOUR.—ORGANIZATION

#### I. MEMBERSHIP AND RIGHT TO VOTE—REPRESENTATIVES

#### ARTICLE 1123

Every undertaker of an establishment insured in it shall be a member of the accident association.

#### ARTICLE 1124

Membership begins with the opening of the establishment and with the beginning of the insurance obligation; for the Empire and the federal States the beginning of the membership shall be regulated according to article 1119.

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Code of January 1, 1913

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## ARTICLE 1125

On each vessel and in every other establishment the undertaker must make known through a placard the following:

To what section the vessel or the establishment belongs;

The location of the business office of the directorate of the accident association and of the directorate of the section.

## ARTICLE 1126

If members or their local representatives do not possess their civic rights, they shall have no right to vote.

## ARTICLE 1127

The constitution must specify the number of votes of shipowners according to the number of persons estimated according to article 1148.

## ARTICLE 1128

PARAGRAPH 1. If the shipowner does not have his place of residence in the home port of the vessel, then he must appoint a representative of the vessel in the home port.

PAR. 2. The name of the representative and changes in the person of the same are to be communicated to the accident association. The shipowner's right to vote and right to be elected shall be suspended until this has been done. So long as this is the case, he shall not be invited to the general meetings of the associations, and in matters of the association's affairs the administrative bodies or the authorities thereof shall be considered as having delivered to him any document by posting it publicly for one week in their business rooms. If his name is not known, they may replace his name in the placard by the name of the vessel. The constitution may further restrict the shipowner in the execution of his rights of membership.

## ARTICLE 1129

PARAGRAPH 1. The representative shall in legal and other matters represent the shipowner in his capacity as member of the association before the association. A limitation in the scope of the power of the representative as against the accident association shall be without effect.

PAR. 2. Communications to the representative concerning matters of the accident association shall have immediate effect for and against the shipowner.

## ARTICLE 1130

PARAGRAPH 1. Joint owners of ships must designate a joint representa-

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Code of January 1, 1913

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tive even if all of them have their place of residence in the home port. Article 1128 is here applicable.

PAR. 2. The manager of the shipowning firm appointed by the joint owners of the ship shall be considered as the representative before the accident association so long as no such representative has been appointed.

#### ARTICLE 1131

Articles 1128 to 1130 shall not apply to the branch institute.

### II. REGISTRATION OF ESTABLISHMENTS

#### ARTICLE 1132

The authorities in charge of the shipping registry and ship's measurements must without delay send notice of the measurements and registry of new vessels to the directorate of the accident association, and the undertakers must send notice concerning the opening of other establishments to the local insurance office of the seat of the establishment.

### III. REGISTER OF ESTABLISHMENTS

#### ARTICLE 1133

PARAGRAPH 1. The directorate of the accident association must keep a register of the establishments on the basis of the—

Register of ships in the German merchant marine as given in the latest edition of the handbook of the German merchant marine;

List of the undertakers which is sent to it by the Imperial Insurance Office under the provisions of article 22 of the law of July 13, 1887 (Reichs-Gesetzblatt, p. 329);

Notices concerning the opening of new establishments (art. 1132).

PAR. 2. No register of establishments shall be kept for the branch institute.

#### ARTICLE 1134

Articles 658, 659, 660, sentences 1 and 2, articles 661 and 663 of the industrial accident insurance are applicable as regards registry of establishments.

### IV. CHANGES IN THE CONDITIONS OF THE ESTABLISHMENT

#### ARTICLE 1135

The authorities in charge of the ship's registry shall indicate to the di-

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Code of January 1, 1913

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rectorate of the accident association all changes and cancellations in the ship's register.

#### ARTICLE 1136

For the vessels insured under article 1046, which are not entered in the ship's registry, the shipowners and managers of shipping firms and the representatives must report to the directorate of the accident association within the time specified by the constitution the following matters:

Loss of the vessels (art. 1174);

Changes in the home port, name, class, and capacity of the ship;

Changes in the person and in the citizenship of the shipowners or joint owners.

#### ARTICLE 1137

PARAGRAPH 1. If these reports to the directorate are not made, or the reports to the authorities in charge of the register are not made (art. 14 of the flag law, *Reichs-Gesetzblatt*, 1899, p. 319) then the owner or joint owner whose name is registered in the register of the establishments is liable for the contributions which are to be assessed upon the members. This liability shall further include the fiscal year in which the report is made.

PAR. 2. The new owner is not released from liability on that account.

#### ARTICLE 1138

The undertakers of floating docks and of pilotage establishments and other establishments designated in article 1046, number 3, must report to the directorate of the accident association every change in the person for whose account the establishment is conducted and all changes in the establishment which are of importance for its membership in the accident association. The report is to be made within the time limit which according to the constitution is specified for reports under article 1136. If the report is not made, then the undertaker shall suffer the same loss of rights as the shipowners in article 1137.

#### ARTICLE 1139

If on the basis of the information from the reports received, or if on their own initiative the directorate of the accident association believes it necessary that the establishment shall be transferred to another accident association or because it is shut down shall be cancelled from the list, then articles 661 to 673 of the industrial accident insurance are correspondingly applicable both for the transfer and for cancellation as well as for transfer of the cost of the accidents and of a share of the reserve.

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Code of January 1, 1913

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## ARTICLE 1140

PARAGRAPH 1. The obligation of giving notice in case of changes in the establishment which for the estimates are of importance (art. 1148) and the further procedure, shall be regulated by the constitution.

PAR. 2. The undertaker has the right of appeal against the decision which the accident association has issued on the basis of reports of changes or of its own initiative.

## ARTICLE 1141

If the accident association has a risk tariff, then the requirement to give notice shall apply in cases of changes in the establishment which affect the classification of establishments in the risk classes, while article 674 shall apply for the further procedure.

## V. CONSTITUTION

## ARTICLE 1142

The accident association shall regulate its internal administration and order of business by a constitution, which the general meeting of the accident association shall decide upon.

## ARTICLE 1143

The constitution must specify—

1. The name and the seat of the accident association;
2. The composition, rights, and duties of the directorate;
3. The form of the declarations of the decisions of the directorate as well as its signature on behalf of the accident association, the manner of making decisions in the directorate, and its representation as to third parties;
4. The calling of the general meeting of the accident association and its method of arriving at a decision;
5. The right to vote of the members and the examination of their credentials;
6. The representation of the accident association as against the directorate;
7. The rates for loss of earnings and for traveling expenses which are to be granted to the representatives of the insured persons (art. 21);
8. Procedure of the administrative bodies of the accident association in classifying the vessels;
9. Procedure in cases of changes in the establishment and of a change in the person of the head of the establishment;

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Code of January 1, 1913

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10. The consequences of shutting down an establishment or of a change in the person of the undertaker, especially as to the guaranteeing of his contributions if he shuts down the establishment;
11. The drawing up, examining, and acceptance of the annual balance sheet;
12. The administrative action relative to the issuance of the regulations containing provisions for accident prevention and for the supervision of the establishments;
13. Procedure in case of the reporting and release from membership of undertakers, of pilots, and of other persons insured according to article 1064, number 1, who belong to the accident association, as well as concerning the amount and ascertainment of the annual earnings of undertakers and of pilots;
14. The method of publishing notices;
15. The provisions as to the amendment of the constitution.

#### ARTICLE 1144

The following provisions of the industrial accident insurance shall apply for the:

Composition of the general meeting of the accident association of representatives, division of the accident association into sections and appointment of district agents (arts. 678 and 679);

Authority of the directorate of the accident association to impose penalties (art. 680);

Drawing up of the constitution (arts. 681 to 683).

#### ARTICLE 1145

The directorate of the accident association must make an announcement in the Reichsanzeiger, if the constitution, with the approval of the Imperial Insurance Office, has been changed in regard to—

1. The name or seat of the accident association;
2. The districts of the sections.

### VI. ADMINISTRATIVE BODIES OF THE ACCIDENT ASSOCIATION

#### ARTICLE 1146

PARAGRAPH 1. The provisions of the industrial accident insurance (arts. 685 to 689) shall be applicable as regards the administrative bodies of the accident association.

PAR. 2. Managers of shipowning firms are also eligible to the administrative bodies of the accident association.

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Code of January 1, 1913

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## VII. EMPLOYEES OF THE ASSOCIATION

## ARTICLE 1147

The provisions of the industrial accident insurance (arts. 690 to 705) shall be applicable as regards employees of the accident association and as regards the transferring of business to salaried business managers.

## VIII. MAKING THE ESTIMATES—RISK TARIFF AND SPECIAL COSTS

## ARTICLE 1148

PARAGRAPH 1. For each seagoing vessel, there shall be estimated the average number of seamen who are necessary to form the crew.

PAR. 2. An estimate shall be made according to classes (arts. 1067 to 1071) on the basis of the following:

The handbook of the German merchant marine;

The registers of undertakers which according to the provisions of articles 21 and 22 of the law of July 13, 1887 (Reichs-Gesetzblatt, p. 329) have been drawn up on the creation of the accident association;

Changes in the conditions of the establishment.

PAR. 3. The above shall not apply in the case of the branch institute.

## ARTICLE 1149

The constitution shall specify that risk classes shall be formed. In such cases articles 706 to 709 of the industrial accident insurance shall be applicable. The constitution must in such cases also contain provisions in regard to the procedure in the apportionment to the risk classes.

## ARTICLE 1150

The directorate of the accident association shall make estimates concerning the vessels and shall apportion the establishments to the risk classes as specified in the constitution.

## ARTICLE 1151

The members must upon demand within two weeks furnish such information to the administrative bodies of the accident association as is necessary to make estimates and apportionment. This shall also apply to the managers of shipowning firms, to the firms' representatives, and to the masters of the vessel.



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Code of January 1, 1913

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## ARTICLE 1152

In the periods within which the risk tariff is to be reëxamined, the estimates and apportionment are to be regularly verified.

## ARTICLE 1153

PARAGRAPH 1. Each member must be notified of his apportionment to the risk classes and each shipowner must be informed of the estimates of his navigation establishments.

PAR. 2. Even before the regular reëxamination, the accident association may make a new estimate of the ship's crew and make a new apportionment of the establishment if it develops that the statements of the undertaker were incorrect or if a change has taken place in the establishment.

PAR. 3. The undertaker shall have an appeal against the estimate and apportionment.

## ARTICLE 1154

PARAGRAPH 1. On the basis of accidents which have taken place on their vessels, the general meeting of the accident association, upon application of the directorate, may either impose supplementary assessments on the undertakers or grant them a rebate for the coming tariff period or for a part of the same.

PAR. 2. The undertaker shall have the right to appeal against the determination of supplementary assessments.

## ARTICLE 1155

PARAGRAPH 1. The constitution may provide that higher contributions shall be paid for voyages with especially dangerous cargoes or in especially dangerous waters or seasons.

PAR. 2. The general meeting of the accident association shall specify the basis for such action and make regulations concerning the reporting and determination of the decisive facts.

PAR. 3. The general meeting may also transfer this matter to a committee or to the directorate.

PAR. 4. Such provisions shall require the approval of the Imperial Insurance Office. For the reëxamination, articles 708 and 709 of the industrial accident insurance shall be correspondingly applicable.

## ARTICLE 1156

PARAGRAPH 1. For the single voyages (art. 1155) the administrative bodies of the accident association may increase the contributions in pro-

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Code of January 1, 1913

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portion to such voyages as have been made in each fiscal year. The details on this point shall be specified in the constitution.

PAR. 2. Article 1151 shall apply as regards the obligation to supply information.

PAR. 3. The imposition of such contributions may be contested in the same way as in the case of a protest against the determination of the contributions (arts. 1178 to 1182).

#### IX. ADMINISTRATION OF THE ASSETS

##### ARTICLE 1157

The provisions of the industrial accident insurance shall be applicable as regards the administration of the assets (arts. 717 to 721).

#### SECTION FIVE.—SUPERVISION

##### ARTICLE 1158

The Imperial Insurance Office shall conduct the supervision of the accident association.

#### SECTION SIX.—PAYMENT OF THE COMPENSATION—RAISING OF THE FUNDS

##### I. PAYMENTS THROUGH THE POST OFFICE DEPARTMENT

##### ARTICLE 1159

PARAGRAPH 1. The compensation shall be paid by the accident association upon the authorization of its directorate through German post offices and as a rule through those post offices in whose districts is the home port of the ship upon which the accident has occurred.

PAR. 2. The directorate shall notify the payee as to the office of payment.

PAR. 3. He may apply to the directorate or at the office of payment so designated to have the payments made at the post office of his place of residence.

##### ARTICLE 1160

The following articles of the industrial accident insurance are to be applied in the following cases:

Article 727 in regard to the necessary certificates for payments;

Article 728 as regards the collection of advance payments through the Post Office Department.

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Code of January 1, 1913

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## ARTICLE 1161

The Imperial Insurance Office may specify the manner in which the payees are to be paid who customarily abide in a foreign country.

## II. RAISING OF THE FUNDS

## ARTICLE 1162

The means for the covering of its expenditures and for the costs of the administration of the branch institute (art. 1192) shall be raised by the accident association by means of members' contributions, which shall be sufficient for the needs of the preceding fiscal year.

## ARTICLE 1163

PARAGRAPH 1. At the branch institute the unions of communes and the undertakers belonging to the institute must pay fixed contributions, specified in advance (arts. 1195 to 1197).

PAR. 2. These contributions must cover the capitalized value of pensions which the institute will probably have to carry and in addition cover the other expenditures which the branch institute has made.

## ARTICLE 1164

PARAGRAPH 1. The provisions of the industrial accident insurance shall be applicable in the following cases:

In regard to the purposes for which the contributions may be raised and the means may be expended (art. 736);

In regard to advances upon contributions as well as contributions paid in advance (arts. 738 and 739);

In regard to the accumulation of a reserve (arts. 741 to 747).

PAR. 2. These provisions, with the exception of article 736, shall not apply to the branch institute.

## III. PROCEDURE IN ASSESSMENTS AND COLLECTIONS

## ARTICLE 1165

PARAGRAPH 1. The directorate of the accident association shall determine which part of the payments shown to have been made by the highest postal authorities shall be charged to the accident association and which part to the branch institute.

PAR. 2. Articles 1166 to 1184 shall be applicable as regards the assessment and collection of the contributions of members.

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Code of January 1, 1913

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## ARTICLE 1166

PARAGRAPH 1. Within six weeks after the expiration of the fiscal year each member of the accident association shall transmit a wage list to the directorate of the accident association.

PAR. 2. This list must contain the following:

1. For each seagoing vessel the insured persons employed during the preceding fiscal year on the vessel, but not belonging to the crew (art. 1046, No. 2);
2. For establishments operating floating docks, pilotage establishments, and other establishments designated in article 1046, No. 3, the insured persons employed in the establishment during the preceding fiscal year;

in addition for all these persons the wage list must show the following:

The compensation earned by these persons;

If the compensation actually received by these persons is not decisive, then a computation of the earnings which is to be used in the assessment and contributions.

PAR. 3. The constitution may permit a summary wage list in accordance with article 750, paragraph 3.

## ARTICLE 1167

The provisions of the industrial accident insurance (art. 751) shall be applicable in regard to the following:

Earlier transmittal of the wage list;

The keeping and preserving of the wage list.

## ARTICLE 1168

The accident association itself may draw up or complete the wage list in the case of members who do not transmit the same promptly or completely.

## ARTICLE 1169

The contributions of the members shall be assessed according to their apportionment to the risk classes, and in the second place according to the following:

1. In case of seagoing vessels according to the amounts obtained from [1] the sum of the average wage payments (arts. 1067 to 1070) for the estimated number of men in the crew and [2] from the wage list; supplementary charges, rebates, or increases of contributions (arts. 1154 and 1155) are to be considered in this connection.
2. In the case of other establishments according to the wage list.

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Code of January 1, 1913

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## ARTICLE 1170

If during the period of contribution the annual amount of the wage payments exceeds 1,800 marks [\$428.40], then of the excess only one-third shall be included in the computation. If it exceeds 5,000 marks [\$1,190], then the excess shall be included in the computation only so far as the constitution has extended the insurance to a higher amount of the annual earnings.

## ARTICLE 1171

PARAGRAPH 1. In the case of vessels which are proved to have been out of commission without interruption for a period longer than 14 days, the contribution is to be proportionately reduced for that period of inactivity which exceeds 14 days.

PAR. 2. It shall be reduced for that fiscal year in which the vessel was out of commission. If the period of inactivity extends over into the following fiscal year, then the reduction as far as necessary shall be postponed until then.

## ARTICLE 1172

PARAGRAPH 1. The contributions shall be reduced only if the shipowner, manager of the shipowning firm, or representative shall within six weeks after the expiration of the fiscal year prove to the directorate of the accident association an interrupted period of inactivity, in the form of a certificate which has been duly attested.

PAR. 2. If the vessel returns to the home port only after the expiration of the fiscal year, then proof can be brought even within six weeks following the return; the contribution, however, must for the time being be paid in full.

## ARTICLE 1173

PARAGRAPH 1. In the case of vessels which in the course of the fiscal year have been lost or are missing (arts. 862 and 863 of the Commercial Code), the directorate of the accident association on its own initiative shall reduce the contributions as soon as the facts which are decisive on the question have been made known to it.

PAR. 2. The reduction shall begin with the date of the loss, or one-half a month after the date up to which the latest news in regard to the vessel reaches.

PAR. 3. If in the case of the loss of the vessel German seamen are transported homeward free of charge upon a German seagoing vessel or are brought back on the vessel (art. 1054, No. 2), then the contribution shall not be reduced for this period.

PAR. 4. If the contribution has already been paid, then it shall be returned in the proper proportion.

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Code of January 1, 1913

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## ARTICLE 1174

A vessel shall be considered as lost also in the cases when it has sunk, has been condemned as of insufficient value for repair, and on that account has been publicly sold without delay, also when it has been robbed, captured, or detained and declared a valid prize.

## ARTICLE 1175

The directorate of the accident association shall compute the contribution to be apportioned to each member for the covering of the total expenditure.

## ARTICLE 1176

The provisions of the industrial accident insurance (art. 754) are applicable as regards extracts from the assessment roll, its communication, and the request for payment; if a manager of the shipowning firm, or representative, has been appointed, then these are to receive notices.

## ARTICLE 1177

Articles 755 and 756 are correspondingly applicable as regards a new determination of the contribution after the extract has been transmitted. The new determination is also permissible when at a later time, because of incorrect statements of the undertaker, the ship's crew has again been estimated (art. 1153) or facts become known on account of which certain voyages are to be specially assessed (art. 1155).

## ARTICLE 1178

PARAGRAPH 1. A protest against the determination of the contributions may be made by a representative or manager of the shipping establishment, and if such has not been appointed, by a member. Articles 757, 758, paragraph 1, and article 759 of the industrial accident association are correspondingly applicable.

PAR. 2. The apportionment of the making and the estimate (arts. 1150 and 1152) may not be contested in this manner.

## ARTICLE 1179

PARAGRAPH 1. Appeals against the decision of the directorate may only be based upon the following:

Mistakes in the computation;

Incorrect rating of the estimate of the crew necessary for the vessel;

Incorrect rating in any other class of the risk tariff than that to which the establishment belongs;

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Code of January 1, 1913

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Insufficient consideration of the rebates (art. 1154);

Incorrect determination of the duration of employment and of the annual earnings of the insured persons who are employed in establishments other than those engaged in navigation;

Insufficient deductions on account of the inactivity of the vessel.

PAR. 2. An appeal on account of the two last-mentioned reasons is not permissible if the directorate has itself drawn up or completed the wage list or has not reduced the contributions because of the negligence of the persons required to do so.

#### ARTICLE 1180

PARAGRAPH 1. If individual voyages have been specially assessed (art. 1155), then an appeal may be based on the claim that the actual prerequisites for a higher contribution do not exist.

PAR. 2. This shall not apply if the person required to do so has neglected to file the required reports.

#### ARTICLE 1181

If, upon protest or appeal, the contribution has been reduced, then article 760 shall be applicable as regards the covering of the deficit and the balancing of the excess payment. The same article shall also apply if the loss of the vessel has only been determined at a later time.

#### ARTICLE 1182

If it later develops that a contribution paid without protest was collected either wholly or partly without right, then articles 1178 to 1181 shall be correspondingly applicable.

#### ARTICLE 1183

The shipowner is liable not only with the ship and the freight, but also personally for the contributions, for the advance upon contributions, and for amounts deposited as guaranties (art. 1143, No. 10). Joint owners are liable in proportion to their shares in the ship.

#### ARTICLE 1184

PARAGRAPH 1. Article 762 is applicable in regard to the covering of contributions which can not be collected.

PAR. 2. The accident association may transfer to the manager of the shipping firm or representative thereof the compulsory collection of amounts which are a charge upon a shipping firm or upon a joint owner.

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Code of January 1, 1913

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## IV. TRANSFERRING AMOUNTS TO THE POST OFFICE DEPARTMENT

## ARTICLE 1185

The provisions of the industrial accident insurance are applicable as regards the transferring of amounts to the post office (arts. 777 to 782).

## SECTION SEVEN.—BRANCH INSTITUTE FOR SMALL-SCALE ESTABLISHMENTS ENGAGED IN NAVIGATION AND IN DEEP-SEA FISHING AND COAST FISHING

## ARTICLE 1186

Those persons are insured in the branch institute who are engaged in establishments engaged in navigation and fishing as described in article 1120.

## ARTICLE 1187

The following are also insured in the branch institute:

1. Undertakers subject to the insurance according to article 1058 who conduct navigation and fishing establishments as a business.
2. Those undertakers who are in charge of establishments engaged in navigation and fishing of the kind described in article 1120, who have insured themselves.

## ARTICLE 1188

The branch institute may not undertake other kinds of insurance.

## ARTICLE 1189

The administrative bodies of the accident association administer the branch institute unless the constitution of the latter provides otherwise (art. 1194).

## ARTICLE 1190

PARAGRAPH 1. The income and expenditures of the branch institute are to be accounted for separately, and its assets are to be kept separately.

PAR. 2. As far as is necessary, the accident association must advance the means for conducting the business of the branch institute from the reserve of the association.

## ARTICLE 1191

The assets which are specified as belonging to the branch institute may not be used for the purposes of the accident association.



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Code of January 1, 1913

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## ARTICLE 1192

The accident association shall bear the cost of administration of the branch institute.

## ARTICLE 1193

Article 791 shall be applicable in regard to the participation of the branch institute in the advance payments to the post office.

## ARTICLE 1194

The general meeting of the accident association must draw up a separate constitution for the branch institute. Article 792, paragraph 2, article 793, Nos. 1, 2, 4, and 6, articles 794 and 796 of the industrial accident insurance are correspondingly applicable as regards this constitution. Article 793, No. 1, is to be correspondingly applied to undertakers subject to the insurance.

## ARTICLE 1195

PARAGRAPH 1. At least once in every five years the Imperial Insurance Office shall specify the contributions in advance.

PAR. 2. These contributions are to be paid by those unions of communes of the coast States which include coast districts, and shall be apportioned to the communes according to the number of insured persons who are engaged in their districts. The highest administrative authority shall specify the details in this connection.

PAR. 3. The Federal Council may order that in the apportionment of the contribution, the duration of the employment and variations in the customary daily wages of the locality, are to be considered.

## ARTICLE 1196

PARAGRAPH 1. The individual union of communes shall raise one-half of the contributions in the same manner as its other expenditures.

PAR. 2. The other one-half of the contributions shall be collected from the undertakers affected through the intervention of the union or of the communes. The union of communes shall specify the details in this connection.

PAR. 3. The union of communes or the communes are responsible for contributions which are not collectible, and with the approval of their supervisory authorities they may defray either wholly or partly the cost from their own funds.

PAR. 4. They may specify that the undertakers shall report to their directorate every change in the person for whose account the establish-

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Code of January 1, 1913

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ment is conducted. If the report is not made, then the employer shall be responsible according to article 1137.

#### ARTICLE 1197

The undertaker shall have the right to appeal to the superior insurance office against being called on for contributions.

### SECTION EIGHT.—ADDITIONAL INSTITUTIONS

#### ARTICLE 1198

The provisions of the industrial accident insurance shall apply to additional institutions of the accident association (arts. 843 to 847).

### SECTION NINE.—ACCIDENT PREVENTION—SUPERVISION

#### I. REGULATIONS FOR THE PREVENTION OF ACCIDENTS

#### ARTICLE 1199

PARAGRAPH 1. The accident association is required to issue the requisite regulations concerning the following:

1. For the undertakers concerning the arrangements and rules for the prevention of accidents as well as concerning the equipment of vessels;
2. Concerning the rules of conduct which insured persons must observe for the prevention of accidents in establishments.

PAR. 2. The regulations for the prevention of accidents are also to be issued for individual districts and for specified classes of vessels or establishments.

#### ARTICLE 1200

An appropriate period of time must be given to the undertakers to provide the prescribed arrangements for the prevention of accidents.

#### ARTICLE 1201

Contraventions on the part of undertakers against the regulations may be punished by fines up to 1,000 marks [\$238], those of the insured person up to 6 marks [\$1.43]. The insured person is not to be punished if he has violated regulations in carrying out the orders of his superior.

#### ARTICLE 1202

In addition to the shipowner, the accident association may also declare the ship's master to be responsible for the execution of the regulations

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Code of January 1, 1913

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issued as above. For each neglected act, fines up to 300 marks [\$71.40] can be imposed upon him.

#### ARTICLE 1203

Articles 852 to 856 of the industrial accident insurance are applicable as concerns the decisions regarding the regulations and the preparation, while article 857 shall apply as regards the attitude to the reports of the technical supervisory officer.

#### ARTICLE 1204

The representatives of the insured persons shall be selected by lot from a number of associates competent for navigation in the superior insurance office, and the lot shall be drawn by the chairman of the directorate in one of its sessions.

#### ARTICLE 1205

PARAGRAPH 1. The following articles of the industrial accident insurance shall be correspondingly applicable in the following cases:

Article 859 as regards the election of representatives of the insured persons;

Article 861 as regards the election of substitutes for the representatives of the insured persons;

Article 863 as regards the allowances for representatives of insured persons;

Articles 864 to 868 as regards the approval of the regulations and the procedure in preparation thereof.

PAR. 2. The provisions of articles 16, 19 to 22, and 24 as regards elected representatives of insured persons shall also be correspondingly applicable to these representatives of the insured persons and their substitutes.

#### ARTICLE 1206

The directorate of the accident association shall communicate the approved regulations to the higher administrative authorities and all marine offices affected, and shall publicly placard the regulations in the business offices of the latter and in the seamen's homes.

#### ARTICLE 1207

The directorate of the accident association shall be competent for determining the fines imposed on the undertakers.

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Code of January 1, 1913

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## ARTICLE 1208

PARAGRAPH 1. That marine office (*Seemannsamt*) shall determine the fines imposed on the masters of vessels which has first recognized the neglect (art. 1202) and shall enter the same in the ship's log. These fines are to be collected immediately.

PAR. 2. Against the imposition of such fines, the master of the vessel, the ship's owner, manager of the shipping firm or representative shall have the right to appeal to the supervisory authority of the marine office (*Seemannsamt*) within one month after the end of the voyage.

PAR. 3. The same or another marine office (*Seemannsamt*) may again impose a fine if in the meantime the order has not been obeyed, unless it can be shown that it was impossible of execution.

PAR. 4. The local insurance office shall be competent as regards the imposition of fines on the insured persons (art. 1199, par. 1, No. 2).

## II. SUPERVISION

## ARTICLE 1209

Articles 874 and 875 of the industrial accident insurance are applicable as regards the execution of the regulations for the prevention of accidents.

## ARTICLE 1210

PARAGRAPH 1. In order to verify the reports transmitted according to law or constitution, the accident association can, through accounting officials, inspect the ship's log, muster rolls, certificates, bill of tonnage, and other ship's papers and lists from which may be ascertained the number of insured persons as well as the extent and duration of the completed voyages.

PAR. 2. The local insurance office may also undertake such examination.

## ARTICLE 1211

With the approval of the Imperial Insurance Office, the business of the technical supervisory official and the accounting official may be combined in one person.

## ARTICLE 1212

In their business office, the authorities are under obligation to place open for inspection of the accounting officials of the accident association all transactions and documents which relate to conditions of the vessel and the crew thereof.

Code of January 1, 1913

## ARTICLE 1213

PARAGRAPH 1. The ship's owners, managers of the shipping concern, and representatives as well as masters of vessels must permit the technical supervisory officials to enter their vessels and inspect the same and must open for inspection on the spot the ship's papers and lists for the inspection of the accounting officials.

PAR. 2. In the same manner, the other undertakers must permit the inspection of their establishments and present their lists for inspection.

## ARTICLE 1214

PARAGRAPH 1. The marine office (*Seemannsamt*) may investigate vessels for the purpose of ascertaining whether the regulations for the prevention of accidents have been complied with.

PAR. 2. The obligations arising out of articles 1212 and 1213 are also applicable to the marine office. The marine office must be permitted to enter fines imposed by it in the ship's log.

## ARTICLE 1215

Upon the application of the technical supervisory officials or of the accounting officials, the marine office (*Seemannsamt*) can impose upon persons, obliged to do so according to articles 1210, 1213, and 1214, fines up to 300 marks [\$71.40] to force them to perform their duties.

## ARTICLE 1216

PARAGRAPH 1. The provisions of the industrial accident insurance are applicable as regards the following:

Taking of the oath (art. 882);

Communicating the name and residence of the technical supervisory officials as well as the activities of the latter (art. 883).

PAR. 2. However, the higher administrative authorities or the authorities or officials designated by them shall take the place of the State supervisory official in regard to the communication.

## ARTICLE 1217

PARAGRAPH 1. The provisions of the industrial accident insurance are applicable in regard to—

Damages to the undertakers in the case of neglecting to comply with the obligation as regards supervision (art. 887);

Supervision through the local insurance office and the Imperial Insurance Office (arts. 888 and 889).

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Code of January 1, 1913

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PAR. 2. The accident association is also authorized in case of inspection of unclassified vessels to collect from the owners of the latter those costs which have arisen through the determination of the condition of the hull of the vessel and the machinery equipment and which were an increase as compared with the cost of inspecting classified vessels. Costs of this kind shall likewise be collected in the same manner as communal taxes.

## SECTION TEN—ESTABLISHMENTS OF THE EMPIRE AND OF THE STATES

### ARTICLE 1218

PARAGRAPH 1. Articles 892, 893, 895, and 887 are correspondingly applicable whenever the Empire or a federal State shall take the place of the accident association.

PAR. 2. In such a case, the following provisions of the navigation accident insurance shall not apply:

The provisions concerning dissolution of the accident association (art. 1122 in connection with art. 647, pars. 1 and 3):

The provisions in regard to the constitution contained in articles 1123 to 1156 and article 1157 in connection with articles 717 to 720;

The provisions concerning supervision (art. 1158);

The provisions in regard to raising of funds as well as the procedure in the assessment and collection (arts. 1162 to 1184);

The provisions concerning transferring of amounts to the post office contained in article 1185 in connection with articles 781 and 782;

The provisions in regard to the branch institute (arts. 1186 to 1197);

The provisions relating to additional institutions (art. 1198);

The provisions relating to the prevention of accidents and supervision contained in articles 1199 to 1216 and article 1217, paragraph 1, in connection with articles 887 and 889 as well as article 1217, paragraph 2;

The penal provisions contained in articles 1220 to 1223 and 1224 in connection with article 910.

## SECTION ELEVEN—LIABILITY OF UNDERTAKERS AND THEIR REPRESENTATIVES

### ARTICLE 1219

PARAGRAPH 1. The provisions of the industrial accident insurance (arts. 898 to 907) are applicable as regards the liability of undertakers and their employees.

Code of January 1, 1913

PAR. 2. In such cases joint owners, pilots and persons of the ship's crew shall have the same status (art. 899).

PAR. 3. This provision shall apply in the case of collision of several vessels which are subject to the navigation accident insurance, to the shipowners of all vessels affected thereby, and to all persons having an equal status with the shipowners.

PAR. 4. Claims for compensation for damages sustained through accident, which a person insured in the branch institute has in the case of bodily injury according to law for the first 13 weeks, shall be retained, provided that the injured person does not have a claim to the benefits of the sickness insurance against a sick fund, miners' sick fund or substitute fund, or if the injured person is exempt from the insurance on account of being entitled to benefits of equal value.

PAR. 5. However, the obligation to provide relief which rests upon the shipowner on the basis of articles 553 to 553b of the Commercial Code and articles 59 to 62 of the Navigation Code are not affected hereby.

## SECTION TWELVE.—PENAL PROVISIONS

### ARTICLE 1220

The accident association may impose fines up to 500 marks [\$119] upon undertakers, joint owners, managers of shipping firms, representatives and masters of vessels if in the three cases mentioned herewith the reports actually contained statements whose incorrectness these persons either knew or under the circumstances must have known; these cases are the following:

1. Reports of the kind not designated in article 1581 which they have transmitted in compliance with the law or constitution;
2. An information which is demanded of them according to the law or constitution;
3. Explanations which must be transmitted to the competent official bodies of the accident association for the purpose of assignment to risk classes.

### ARTICLE 1221

The directorate of the accident association may in addition impose a fine up to 300 marks [\$71.40] upon persons designated in article 1220 if they do not promptly comply with their duties as specified in the law or in the constitution as regards the—

1. Appointment of representatives or communication of their names or change of them to the directorate of the accident association;
2. Reporting of changes in the establishment;

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Code of January 1, 1913

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3. Transmission of reports;
4. Furnishing of information;
5. Complying with the provisions of the constitution in regard to the shutting down of establishments.

#### ARTICLE 1222

In so far as on the basis of this law undertakers or joint owners are liable to penalties the following persons shall be considered as having the same status:

1. All members of the directorate wherever a stock company, mutual insurance association, registered coöperative society, guild, or other legal person is the undertaker or joint owner;
2. The business managers, if an association with limited liability is the undertaker or joint owner;
3. All copartners personally liable provided that they are not excluded from representation if another form of business corporation is the undertaker or joint owner;
4. The legal representative of undertakers not legally competent to transact business, or partially so, as well as liquidators of a business corporation, a mutual insurance association, a registered coöperative society, a guild, or any other legal person.

#### ARTICLE 1223

The employer is liable for the fines which according to article 1183 have been imposed upon him or the ship's master upon the basis of articles 1220 to 1222.

#### ARTICLE 1224

The following provisions of the industrial accident insurance shall be correspondingly applicable:

Article 910 in regard to appeals against the determination of fines;

Article 911 in regard to deducting the contributions from the earnings and in such cases shall also be applicable to joint owners, masters of vessels and their employes;

Article 914 in regard to the funds to which the fines shall accrue, however, in place of the sick fund of the place of employment, that sick fund shall receive the sum in whose district the establishment has its seat.

#### ARTICLE 1225

The provisions against limiting the insured persons in their rights contained in this law (art. 139) shall also apply to joint owners, masters



Code of January 1, 1913

of vessels and their employés and likewise the penal provisions as regards contravention (art. 140).

## BOOK FOUR—INVALIDITY AND SURVIVORS' INSURANCE

### SECTION ONE.—SCOPE OF THE INSURANCE

#### I. COMPULSORY INSURANCE

##### ARTICLE 1226

PARAGRAPH 1. Beginning with the completed sixteenth year of age, the following persons are insured in case of invalidity and old age and in addition in favor of their survivors as specified herewith:

1. Workmen, helpers, journeymen, apprentices, and servants.
2. Establishment officials, foremen, and other employés in similar higher positions if such employment is for all of them their principal occupation.
3. Clerks and apprentices in commercial establishments, clerks and apprentices in pharmacies.
4. Members of the stage and of orchestras without regard to artistic value of their services.
5. Teachers and tutors.
6. The crews of German seagoing vessels and the crews of vessels engaged in inland navigation.

PAR. 2. The prerequisite of insurance for all of these persons is that they shall be employed for compensation (art. 160), and for those designated under Nos. 2 to 5, as well as for masters of vessels that their regular annual earnings in the form of compensation shall not exceed 2,000 marks [\$476].

##### ARTICLE 1227

An employment in which the compensation consists only of free board and lodging is exempt from insurance.

##### ARTICLE 1228

Those Germans are also insured who are employed in an official representative office of the Empire or of a federal State in a foreign country or employed by the directors or members thereof.

##### ARTICLE 1229

The Federal Council may either generally or for single districts extend

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Code of January 1, 1913

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the insurance obligation for specified branches of the industry to the following:

1. Persons carrying on business or other undertakers of establishments who regularly employ in their establishments either no one or at the most one person subject to the insurance.
2. Persons engaged in home-working industries (art. 162) without regard to the number of their home-working employés.

#### ARTICLE 1230

The Federal Council may specify in how far persons conducting a business (or persons giving the order, art. 469) are required to fulfill the obligations of an employer for the following:

1. Persons engaged in home work upon their order and for their account, as well as home-working employés of such persons;
2. Persons employed in home work upon their order by intermediate persons, distributors, factors, and zwischenmeisters.

#### ARTICLE 1231

The Federal Council may specify how far Germans in the service of foreign States and such persons who are not subject to German jurisdiction are required to fulfill the obligation of employers.

#### ARTICLE 1232

The Federal Council shall specify in how far temporary services shall remain exempt from the insurance.

#### ARTICLE 1233

PARAGRAPH 1. The Federal Council may specify that foreigners shall be exempt from insurance whose sojourn in Germany has been permitted by the authorities for only a specified time.

PAR. 2. In such cases, the employer shall pay according to the orders of the Imperial Insurance Office such an amount to the insurance institute as they would otherwise have to pay from their own means.

#### ARTICLE 1234

PARAGRAPH 1. Exempt from the insurance are employees in the establishments or in the service of the Empire, of a federal State, of a union of communes, and of a commune or of an insurance carrier, if there has been guaranteed to them a claim to retirement pension equal to the minimum amount of the invalidity pension according to the rates of

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Code of January 1, 1913

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the first wage class as well as to widows' pension according to rates of the same wage class and likewise to orphans' pensions.

PAR. 2. The same shall apply to teachers and tutors in the public schools or institutions.

#### ARTICLE 1235

The following are exempt from the insurance:

1. Officials of the Empire, of the federal States, of the unions of communes, of the communes, of the insurance carriers, and teachers and tutors in the public schools or institutions, as long as they are being trained solely for their occupation;
2. Military persons who carry on during their service or during their training for a civil employment, one of the occupations designated in article 1226, to which article 1234 is to be applied;
3. Persons who are employed in teaching for a compensation, during the scientific training for their future occupation.

#### ARTICLE 1236

Whoever is receiving an invalidity or survivors' pension according to imperial law or is an invalid shall be exempt from insurance (arts. 1255 to 1258).

#### ARTICLE 1237

Upon application the following persons shall be exempt from the insurance obligation, if they have been guaranteed retirement pensions, part pay, or similar receipts equal in amount to the minimum invalidity pensions according to the rates of the first wage class and in such connection have been guaranteed a claim to survivors' relief (art. 1234). These persons are—

Whoever has been guaranteed these benefits by the Empire, a federal State, a union of communes, a commune, or an insurance carrier;

Whoever has been guaranteed these benefits on the basis of earlier employment as teacher or tutor in a public school or institution.

#### ARTICLE 1238

Upon their application, there shall be exempt from the insurance obligation, those persons subject to the insurance who have been employed during or after the time of their college training as preparation for their future occupation, or have been employed in a position which forms a transitory step to an employment both exempt from insurance and corresponding to an employment requiring a college training.

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Code of January 1, 1913

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## ARTICLE 1239

PARAGRAPH 1. Upon his application there shall be exempt from insurance obligation whoever in the course of a calendar year undertakes work for wages only in specified seasons of the year for not more than 12 weeks or all together for not more than 50 days, but in other respects procures independently his maintenance or is employed without compensation. The exemption is permissible only as long as, according to article 1279, 100 computable weekly contributions have not been paid.

PAR. 2. The Federal Council may determine particulars hereto.

## ARTICLE 1240

PARAGRAPH 1. The local insurance office (decision committee) competent for the place of residence of the person making the application shall decide thereon. If the applicant has no residence in Germany, then the local insurance office of the place of his permanent abode shall decide. On appeal, the superior insurance office shall decide finally.

PAR. 2. Exemption shall be effective from the date of receipt of the application.

## ARTICLE 1241

PARAGRAPH 1. The local insurance office (decision committee) shall revoke the exemption as soon as the prerequisites required thereby are no longer present; upon appeal the superior insurance office shall decide finally.

PAR. 2. The insurance obligation shall again enter into force upon the relinquishment of the exemption and upon its final revocation.

## ARTICLE 1242

Upon the application of the employer, the Federal Council shall specify in how far articles 1234 and 1235, No. 1, articles 1237, 1240 and 1241 shall be applicable to the following:

1. Persons employed in establishments or in the service of other public unions or corporations or as teacher and tutor in non-public schools and institutions, if the claims designated in article 1234 have been guaranteed to them or if they are only being trained for their occupation;
2. Persons to whom on the basis of earlier employment in such unions or corporations, schools or institutions, have been guaranteed retirement pensions, part pay, or similar benefits equal to the minimum amount of the invalidity pension according

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Code of January 1, 1913

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to the rates of the first wage class, and in addition thereto have been guaranteed a claim to survivors' relief (art. 1234);

3. Officials and employees of the court, domanial, cameralistic, forestry, and similar administrations of the State sovereigns, as well as of the ducal regency of Brunswick and the administration of the entailed estates of the princes of Hohenzollern.

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II. VOLUNTARY INSURANCE

ARTICLE 1243

PARAGRAPH 1. Up to their completed fortieth year of age the following persons are entitled to join the insurance voluntarily (self-insurance):

1. The persons designated in article 1226 under Nos. 2 to 5 and masters of vessels, if their regular annual earnings are more than 2,000 marks [\$476] but do not exceed 3,000 marks [\$714];
2. Persons carrying on a business and other undertakers of establishments who employ regularly in their establishments either no one or at the most two persons subject to the insurance, as also persons engaged in home work;
3. Persons who are exempt from the insurance according to articles 1227 and 1232.

PAR. 2. When they cease to comply with the conditions which are the basis for self-insurance, those entitled to self-insurance may continue the same or renew it at a later time according to article 1283.

ARTICLE 1244

Whoever ceases to have the status of a person subject to the insurance may voluntarily continue the insurance or renew it at a later time according to article 1283 (continuation of insurance).

III. WAGE CLASSES

ARTICLE 1245

The following classes are created for insured persons on the basis of the amount of the annual earnings:

- Class I, up to 350 marks [\$83.30];
- Class II, over 350 marks [\$83.30] and up to 550 marks [\$130.90];
- Class III, over 550 marks [\$130.90] and up to 850 marks [\$202.30];
- Class IV, over 850 marks [\$202.30] and up to 1,150 marks [\$273.70];
- Class V, over 1,150 marks [\$273.70].

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Code of January 1, 1913

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## ARTICLE 1246

PARAGRAPH 1. Unless the following provisions specify otherwise, an average amount instead of the actual annual earnings shall be decisive as regards the apportionment to the wage classes.

PAR. 2. The annual earnings shall be considered as the following:

1. For members of a sick fund or of a miner's sick fund, 300 times the basic wage (arts. 180, 181).
2. For seamen insured on the basis of article 1046, number 1, in so far as the imperial chancellor has determined for them an average amount (arts. 1067 to 1071), the amount so determined.
3. Otherwise 300 times the amount of the local wage rate in so far as the superior insurance office has not specified it otherwise for single branches of industry.

PAR. 3. Agricultural establishment officials belong to the third class and teachers and tutors to the fourth class in so far as the former do not show annual earnings in excess of 850 marks [\$202.30] and the latter in excess of 1,150 marks [\$273.70].

## ARTICLE 1247

If a fixed cash compensation has been agreed upon in advance for periods of weeks, months, quarters, or years and this exceeds the average amount, then the cash compensation is to be used.

## ARTICLE 1248

Insurance in a higher wage class is permitted, but the employer is only then required to pay the higher contribution if he has made an agreement with the insured person to this effect.

## ARTICLE 1249

The insurance institute shall publish the wage classes and the contributions for the individual localities of its district and for each group of insured persons.

## SECTION TWO.—BENEFITS OF THE INSURANCE

## I. GENERAL PROVISIONS

## ARTICLE 1250

The benefits of the insurance consist of invalidity pensions or old-age pensions, as well as pensions, widows' money, and orphans' settlements for the survivors.

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Code of January 1, 1913

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## ARTICLE 1251

Invalidity or old-age pensions shall be received by whoever proves the existence of invalidity or of the age specified in the law as well as proof of the waiting term and has kept his claim in force.

## ARTICLE 1252.

Relief for survivors shall be granted if the deceased at the time of his death had fulfilled the waiting term for invalidity pensions and had kept the claim alive; widow's money and orphans' settlements shall be granted only if the widow in addition at the time when these benefits became due has herself fulfilled the waiting term for invalidity pensions and has kept the claim alive.

## ARTICLE 1253

Computed from the receipt of the application therefor, no arrears of pension shall be paid for more than one year of the period preceding the application, unless the person entitled has been hindered through conditions which were beyond his control from making the application at the proper time. In such case, the application shall be made within three months after the preventing cause has been removed.

## ARTICLE 1254

PARAGRAPH 1. Whoever purposely makes himself an invalid shall lose the claim to a pension.

PAR. 2. If the insured person or the widow has incurred the invalidity while committing an act which according to the verdict of a court is a crime, or intentional misdemeanor, then the pension may be denied either wholly or in part. Contraventions of mining regulations or of article 93, paragraphs 2 and 3, and articles 95 to 97, of the Navigation Code, shall not be considered as misdemeanors in the meaning of the preceding sentence. Invalidity pensions or widows' pensions may be either wholly or partly transferred to relatives living in Germany if the insured person or the widow have previously either wholly or partly supported them from their earnings. In the meaning of this paragraph, German protectorates shall be considered as parts of the Empire.

PAR. 3. The pension may also be denied if no verdict of a court has been rendered because of the death, absence, or any other cause connected with the person of the applicant.

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Code of January 1, 1913

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## II. INVALIDITY PENSIONS

## ARTICLE 1255

PARAGRAPH 1. Without regard to age, an insured person shall receive an invalidity pension if, as the result of sickness or other infirmity, he has become a permanent invalid.

PAR. 2. That person shall be considered an invalid who is no longer in a condition to earn, through work which corresponds to his powers and abilities, and which with a proper consideration of his education and his previous occupation he may be expected to perform, one-third of that amount which persons physically and mentally sound of the same kind and with similar education are accustomed to earn through labor in the same region.

PAR. 3. Invalidity pensions shall also be received by insured persons who are not permanent invalids, but who have been such during 26 weeks without interruption or have been invalids after the cessation of the pecuniary sick benefit; the compensation shall be paid for the further duration of the invalidity (sickness pensions).

## ARTICLE 1256

The invalidity pension shall commence on the day on which the invalidity begins, but without affecting articles 1253 and 1255, paragraph 3. If the beginning of the invalidity cannot be determined, this date shall be considered as the one on which the application for a pension was received by the local insurance office.

## III. OLD-AGE PENSIONS

## ARTICLE 1257

Old-age pensions shall be received by the insured person beginning with the completed seventieth year of life even if he is not an invalid.

## IV. BENEFITS OF SURVIVORS

## ARTICLE 1258

PARAGRAPH 1. The widow's pension shall be received by a permanently invalidated widow after the death of her insured husband.

PAR. 2. That widow shall be considered an invalid who is no longer in a condition to earn, through work which corresponds to her powers and abilities, and which with a proper consideration of her education



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Code of January 1, 1913

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and her previous social status she may be expected to perform, one-third of that amount which physically and mentally sound women of the same kind and with similar education are accustomed to earn through labor in the same region.

PAR. 3. Invalidity pensions shall also be received by widows who are not permanent invalids, but who have been such during 26 weeks without interruption, or have been invalids after the cessation of the pecuniary sick benefit; the compensation shall be paid for the further duration of the invalidity (widows' sickness pensions).

#### ARTICLE 1259

Orphans' pensions shall be received after the death of the insured father by his legitimate children under 15 years of age, and after the death of a female insured person by her fatherless children under 15 years of age. Illegitimate children shall also be considered as fatherless.

#### ARTICLE 1260

PARAGRAPH 1. After the death of the insured wife of a disabled husband, who during her life has supported her family either wholly or principally out of her earnings, the legitimate children under 15 years of age shall receive orphans' pensions and the husband a widower's pension as long as the indigence lasts.

PAR. 2. In regard to orphans' pensions, this provision shall be applicable even if at the time of the death of the insured person the marriage had been dissolved.

#### ARTICLE 1261

PARAGRAPH 1. After the death of the insured wife, whose husband without legal grounds has remained away from the common household and has not complied with his duties of support as a father, the legitimate children under 15 years of age shall receive orphans' pensions as long as they are indigent.

PAR. 2. This provision shall also apply if at the time of the death of the insured, the marriage has been dissolved and the husband has failed to fulfill his duty of support as a father.

#### ARTICLE 1262

If the insured person leaves orphan grandchildren under 15 years of age whose support, either wholly or partially, he had defrayed, then they shall receive orphans' pensions as long as they are indigent.

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Code of January 1, 1913

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## ARTICLE 1263

The pensions of the survivors begin with the date of death of the one furnishing the support. If the widow on this date was not yet an invalid, then the beginning of the pension shall be determined by article 1256 or article 1258, paragraph 3.

## ARTICLE 1264

The widow's money shall become due at the death of the husband and orphans' settlements at the completion of the fifteenth year of the lives of the children.

## ARTICLE 1265

PARAGRAPH 1. The legal benefits shall also be granted in cases when the insured person is missing. He shall be considered as missing if during one year no trustworthy news has been received concerning him and the circumstances make his death seem probable.

PAR. 2. The local insurance office may demand from the survivors a solemn declaration that they have received no news concerning the existence of the missing person other than that which they have reported.

## ARTICLE 1266

The date of the death of the missing person shall be fixed by the insurance institute according to its own discretion. Article 1100, paragraph 1, shall be applicable as regards persons who have disappeared while at sea.

## ARTICLE 1267

Survivors shall have no claim to the benefits if they have intentionally brought about the death of the insured person.

## ARTICLE 1268

PARAGRAPH 1. The claim of the survivors of a foreigner, if they at the time of his death did not customarily live in Germany, shall be limited to one-half of the benefits without the imperial subsidy.

PAR. 2. The Federal Council may suspend this limitation for foreign border territories or for subjects of such foreign States whose legislation guarantees corresponding relief.

PAR. 3. In the meaning of paragraph 1, German protectorates shall be considered as parts of the Empire.

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Code of January 1, 1913

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## V. MEDICAL TREATMENT

## ARTICLE 1269

In order to prevent impending invalidity of an insured person or of a widow resulting from sickness, the insurance institute may inaugurate a course of medical treatment.

## ARTICLE 1270

PARAGRAPH 1. The insurance institute may in particular place the insured person in a hospital or in an institution for convalescents.

PAR. 2. If the sick person is married and lives together with his family or has a household of his own, or is a member of the household of his family, then his consent thereto shall be required.

PAR. 3. In the case of a minor person, his consent shall be sufficient.

## ARTICLE 1271

The relatives of the sick person whose support he has either wholly or principally defrayed out of his earnings shall, during the course of treatment (art. 1270) receive house money even in cases where he has no claim against the sick fund, the miners' sick fund, or the substitute fund. It shall amount to one-fourth of the local wage for an adult day laborer. If, however, up to the assumption of the matter by the insurance institute, the sick person was subject to the sickness insurance, the house money shall be based on the provisions of the sickness insurance for that time also for which the obligation of the sick fund no longer exists. An invalidity pension or widow's pension may be either wholly or partly refused for the duration of the course of treatment. The house money shall not be paid, for the time and to the extent that wages or salary are paid, on the basis of a legal claim.

## ARTICLE 1272

If the sick person without legal or other reasonable ground declines to receive the medical treatment (art. 1269) and if the invalidity could probably have been prevented through the medical treatment, then the pension may, for the time being, be refused either wholly or partly if the sick person has been notified of this consequence.

## ARTICLE 1273

In regard to controversies which have not been settled on the determination of the pension, the superior insurance office shall decide finally upon the appeal.

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Code of January 1, 1913

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## ARTICLE 1274

With the approval of the supervisory authority, the insurance institute may expend its funds to promote or to carry out general measures for the prevention of premature invalidity among insured persons or improve the health conditions of the population subject to the insurance. Approval may also be granted for the expenditure of lump sums.

## VI. PAYMENTS IN KIND INSTEAD OF PENSIONS

## ARTICLE 1275

PARAGRAPH 1. With the approval of the higher administrative authority, the communes or unions of communes may by legal enactment specify that pensions up to two-thirds of their amount shall not be paid in cash but in kind. This shall apply only to pensioners who reside in the district: *Provided*, That these or those supporting them receive no wages as agricultural workers, but according to local custom are paid either wholly or partly in kind, and provided a mutual agreement is reached concerning the payment in kind instead of a pension.

PAR. 2. In the case of orphans' pensions, the consent of the guardian shall be required in addition. The latter must secure the approval of the orphans' court.

PAR. 3. The value of the commodities shall be determined by the higher administrative authority according to the average prices.

## ARTICLE 1276

PARAGRAPH 1. Payments in kind shall be granted by the commune of the place of residence. The claim to the pension shall be transferred to the commune to the extent of the value of the payments in kind.

PAR. 2. The local insurance office (decision committee) shall decide controversies between the commune and the beneficiary. The superior insurance office shall decide finally upon appeal.

PAR. 3. If the claim to the pension has been transferred to the commune finally, then the insurance institute shall notify the Post Office Department.

## ARTICLE 1277

PARAGRAPH 1. The constitution of the insurance institute may authorize the directorate to place the pensioner, upon his application, in a home for invalids or orphans' home or in a similar institution and use the pension either wholly or partly for this purpose.

Code of January 1, 1913

PAR. 2. Invalid homes and similar institutions shall be considered as hospitals, asylums, and medical institutions in the meaning of article 11, paragraph 2, and article 23, paragraph 2, of the law relating to the place of residence as regards the claim for support (Reichs-Gesetzblatt, 1908, p. 381).

PAR. 3. Placing the pensioner in such an institution operates as relinquishment of the pension for one-quarter of a year, and if he does not object to the same within one month before the expiration of this time, each time for an additional quarter of a year.

## VII. WAITING TERM

## ARTICLE 1278

The duration of waiting term shall be—

1. In the case of invalidity pensions, if on the basis of the insurance obligation at least 100 contributions have been paid for the insured, 200 and in other cases 500 contributory weeks.
2. In the case of old-age pensions, 1,200 contributory weeks.

## ARTICLE 1279

PARAGRAPH 1. The contributions for voluntary insurance shall be included in the waiting term for invalidity pensions only if at least 100 contributions on the basis of the insurance obligation or of self-insurance have been paid.

PAR. 2. This shall not apply to the contributions which the insured person has voluntarily paid in the first four years after his branch of industry has become subject to the insurance.

## VIII. EXPIRATION OF THE CLAIM

## ARTICLE 1280

The claim shall cease if, during two years after the date of issue designated on the receipt card (art. 1416), less than 20 weekly contributions have been paid on the basis of the insurance obligation or of the continuation of the insurance.

## ARTICLE 1281

In the meaning of article 1280, the following periods are to be counted as weekly contributions:

## Code of January 1, 1913

1. Periods of military service and sickness (arts. 1393 to 1394).
2. The periods of employment not subject to the insurance during which the claimant or the deceased has received an invalidity or old-age pension from a sick fund or special institute of the kind designated in articles 1321, 1360, and 1375, or has received an accident pension equal to at least one-fifth of the full pension.

## ARTICLE 1282

In the case of self-insurance and its continuation, there must have been paid for the maintenance of the claim at least 40 contributions during the period designated in article 1280. This shall not apply if on the basis of the insurance obligation more than 60 contributions have been paid.

## ARTICLE 1283

PARAGRAPH 1. The claim shall again become effective if the insured person again takes up an employment subject to the insurance or if he renews the insurance status through voluntary payment of contributions and accordingly has completed a waiting term of 200 contributory weeks.

PAR. 2. If the insured person by again taking up the employment subject to the insurance, or by renewing the insurance status through voluntary payment of contributions, has completed the sixtieth year of life, then the claim shall only become effective if before the time when the claim expires he has made use of at least 1,000 contributory stamps.

PAR. 3. If the insured person has completed the fortieth year of life, then the claim shall become effective through voluntary payment of contributions, only if before the expiration of the claim he has used 500 contributory stamps, and accordingly has completed a waiting term of 500 contributory weeks.

## IX. COMPUTATION OF INSURANCE BENEFITS

## ARTICLE 1284

PARAGRAPH 1. The insurance benefits consist of a fixed imperial subsidy and of a share from the insurance institute.

PAR. 2. If the full pension amounts are not paid, then the shares of the Empire and of the insurance carrier shall be correspondingly reduced.

## ARTICLE 1285

The imperial subsidy shall consist of 50 marks [\$11.90] annually for each invalidity pension, old-age pension, widow's pension, widower's pension, and 25 marks [\$5.95] for each orphan's pension, single payments

Code of January 1, 1913

of 50 marks [\$11.90] for each widow's money, and 16 2-3 marks [\$3.97] for each orphan's settlement.

## ARTICLE 1286

The share of the insurance institute shall be based on the contributions and on the periods of military service and sickness which are considered as contributory weeks.

## ARTICLE 1287

In the case of invalidity pensions the insurance institute pays a basic amount and the supplementary increases; in the case of survivors' pensions, of widows' money and of orphans' settlements, it pays a part of the basic amount and of the supplementary increases, and in the case of old-age pensions a fixed annual amount.

## ARTICLE 1288

PARAGRAPH 1. The basic amount of the invalidity pension shall always be computed upon 500 contributory weeks. If less than this number are proved, then the number lacking shall be added from wage class I; if there are more than this number, then the contributions in excess which have been paid in the lower wage classes shall not be considered.

PAR. 2. For each contributory week there shall be credited the following:

	Pfennigs.
In wage class I.....	12[\$0.029]
In wage class II.....	14[ .033]
In wage class III.....	16[ .038]
In wage class IV.....	18[ .043]
In wage class V.....	20[ .048]

## ARTICLE 1289

The supplementary increase of the invalidity pension shall for each contributory week amount to the following:

	Pfennigs
In wage class I.....	3[\$0.007]
In wage class II.....	6[ .014]
In wage class III.....	8[ .019]
In wage class IV.....	10[ .024]
In wage class V.....	12[ .029]

Code of January 1, 1913

## ARTICLE 1290

For each contributory week, one contribution only shall be considered. If a larger number of contributory weeks has been affixed and the stamps in excess can not be determined, then the contributions of the lowest wage classes are to be stricken out until only the highest amount permissible remains.

## ARTICLE 1291

If the beneficiary of the invalidity pension has children under 15 years of age, then the invalidity pension shall be increased for each child by one-tenth, but not to exceed one and one-half times the amount of the invalidity pension.

## ARTICLE 1292

In the two cases stated herewith the share of the insurance institute equals the specified part of the basic amount and of the supplementary increases of the invalidity pension which the one providing the support at the time of his death had received or in the case of invalidity would have received. These cases are the following:

In the case of widows' pensions and widowers' pensions, three-tenths of the basic amount and of the increases;

In the case of orphans' pensions, for one orphan three-twentieths, for each additional orphan one-fortieth, of the basic amount and of the increases.

## ARTICLE 1293

PARAGRAPH 1. The share of the insurance institute in old-age pensions amounts to the following:

	Pfennigs
In wage class I.....	60[ \$14.28]
In wage class II.....	90[ 21.42]
In wage class III.....	120[ 28.56]
In wage class IV.....	150[ 35.70]
In wage class V.....	180[ 42.84]

PAR. 2. For contributions of different wage classes the corresponding average shall be granted. If more than 1,200 contributory weeks are proved, then the contributions in excess which have been made in the lowest wage class shall not be considered.

## ARTICLE 1294

PARAGRAPH 1. The pensions of the survivors may not together amount to more than one and one-half times the invalidity pension which the



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Code of January 1, 1913

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deceased at the time of death was receiving or in the case of invalidity would have received.

PAR. 2. Orphans' pensions alone may not together amount to more than this invalidity pension.

PAR. 3. If the pensions together add to a higher amount, then they shall be reduced in proportion to their size.

PAR. 4. Grandchildren have a claim only in so far as the highest amount allowable does not accrue to the children.

#### ARTICLE 1295

Whenever one survivor ceases to receive a pension the pensions of the others are raised to the highest amount allowable.

#### ARTICLE 1296

The widow's money shall be equal to 12 times the monthly amount of the widow's pension, and the orphan's settlement 8 times the monthly amount received as orphan's pension.

#### ARTICLE 1297

The pension shall be paid in monthly installments in advance and rounded upward to full sums of 5 pfennigs [1.19 cents].

### X. CESSATION OF THE BENEFITS

#### ARTICLE 1298

The widow's pension and the widower's pension shall cease in the case of remarriage.

#### ARTICLE 1299

The orphan's pension shall cease as soon as the orphan has completed the fifteenth year of life.

#### ARTICLE 1300

The claim to widow's money expires if the claim has not been filed within one year after the death of the husband.

#### ARTICLE 1301

PARAGRAPH 1. For the month of death and the month during which the payment ceases the pension shall be paid in full, subject to articles 1295 and 1318.

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Code of January 1, 1913

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PAR. 2. In cases where there is a part of a month, including in addition to the pension of the insured person that of the survivors, then they shall claim the higher amount.

#### ARTICLE 1302

If at the death of the beneficiary the pension due has not been collected, then those entitled to receive the same are eligible in the order named: The husband or wife, the children, the father, the mother, the brothers and sisters, provided that at the time of his death they were living with the beneficiary in a common household.

#### ARTICLE 1303

PARAGRAPH 1. If an insured person or a person entitled to receive a widow's pension and widower's pension, or widow's money, dies after he has filed his claim, then the following in the order named are entitled to continue the procedure and to receive the amounts due up to the date of death, namely, the husband or wife, the children, the father, the mother, the brothers and sisters, provided that at the time of his death they were living with the one entitled thereto in a common household.

PAR. 2. If the orphan entitled to an orphan's settlement dies before its payment, then the local insurance office at its own discretion shall specify to whom it is to be paid.

### XI. WITHDRAWAL OF THE PENSION

#### ARTICLE 1304

If the beneficiary of an invalidity pension or widow's pension because of an important change in his condition is no longer an invalid in the meaning of articles 1255 and 1258, then the insurance institute shall withdraw the pension.

#### ARTICLE 1305

If it is to be expected that a course of medical treatment would restore the earning capacity of the beneficiary of an invalidity pension, widow's pension, or widower's pension, then the insurance institute may inaugurate such treatment. In such cases articles 1270, 1271, and 1273 are correspondingly applicable. The relatives of the beneficiaries of widows' pensions or of widowers' pensions shall receive no house money.

#### ARTICLE 1306

If the pensioner without legal or other reasonable ground therefor declines to receive the course of medical treatment, and thereby hinders

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Code of January 1, 1913

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the removal of invalidity, or if he declines without reason to submit to a subsequent investigation or observation carried on in a hospital, then the pension may for the time be withdrawn either wholly or partly: *Provided*, That he has been notified of this consequence.

## ARTICLE 1307

Widowers' pensions and orphans' pensions which have been granted according to articles 1260 to 1262 shall be withdrawn by the insurance institute as soon as the indigence of the recipient has ceased.

## ARTICLE 1308

The decision which withdraws the pension shall become effective on the expiration of the month following its communication.

## ARTICLE 1309

If the invalidity pension or widow's pension has been granted anew or has been granted in the place of a sickness pension, or if an old-age pension is granted, then the time of the previous receipt of the pension by the insured person shall be included in the computation in the same manner as is done for a proved period of sickness (art. 1394, par. 2). During the time of the previous receipt of the pension the claim shall not expire.

## ARTICLE 1310

If it is proved that the insured person who was considered to have disappeared is still alive, then further payments of the pension shall be suspended. The insurance institute does not need to demand the return of the pension paid without right.

## XII. SUSPENSION OF THE PENSION—CAPITAL SUM SETTLEMENTS

## ARTICLE 1311

PARAGRAPH 1. The pension shall be suspended if it is received at the same time as an accident pension granted under the imperial laws herewith and if the two together exceed—

1. In the case of invalidity pensions and old-age pensions, seven and one-half times the basic amount of the invalidity pension;
2. In the case of widows' pensions and widowers' pensions three and one-half times, in the case of orphans' pensions three times, the basic amount of the invalidity pensions which the one provid-

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Code of January 1, 1913

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ing the support at the time of his death was receiving or in the case of invalidity would have received.

## ARTICLE 1312

PARAGRAPH 1. The pension shall be suspended as long as the beneficiary serves a prison term of more than one month or is placed in a workhouse or in a reformatory.

PAR. 2. If he has relatives in Germany whom he is supporting either wholly or principally from his earnings, then the invalidity pension or old-age pension shall be transferred to them.

## ARTICLE 1313

The pension shall be suspended—

1. As long as the person entitled thereto customarily remains in a foreign country of his own free will.
2. As long as a foreign beneficiary is expelled from the territory of the Empire on the basis of condemnation in a penal procedure. The same applies to a foreign beneficiary who has been expelled from the territory of a federal State because of condemnation in a penal procedure, as long as he does not stay in another federal State.

## ARTICLE 1314

The Federal Council can suspend the stopping of a pension for foreign border territories or for such foreign States whose legislation guarantees a corresponding relief to Germans or their survivors.

## ARTICLE 1315

In the meaning of articles 1312 and 1313 German protectorates shall be considered as parts of German territory.

## ARTICLE 1316

In the case mentioned in article 1313, No. 1, a foreign beneficiary is to receive in settlement an amount equal to three times, or if the matter relates to an orphan's pension an amount equal to one and one-half times, the amount of his annual pension.

## ARTICLE 1317

With their consent, the same settlements may be granted to those foreigners who—

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Code of January 1, 1913

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1. Except in the cases mentioned in articles 1313, No. 2, have left the territory of the Empire on the basis of a decree issued by a German authority.
2. Are entitled to the receipt of the pension on the basis of a decree issued by the Federal Council according to article 1314.

## ARTICLE 1318

If the prerequisites complied with entitle anyone to several pensions on the basis of the invalidity and survivors' insurance, then the smaller pensions shall be suspended beginning with the date of the combined right.

## XIII. SPECIAL POWERS OF THE INSURANCE INSTITUTES

## ARTICLE 1319

If, on new investigation, the insurance institute becomes convinced that pensions have been improperly denied, withdrawn, suspended, or have been determined at too small an amount, then the institute can make a new determination.

## ARTICLE 1320

The insurance institute need not demand the return of the pension sums which it has had to pay under the law before a decision of legal force has been made.

## XIV. RELATION TO OTHER CLAIMS

## ARTICLE 1321

PARAGRAPH 1. Factory funds, seamen's funds, and similar funds can reduce the invalidity, old age, and survivors' relief which they give their members insured under the imperial laws by not more than the value of the imperial benefits of this kind. They must then correspondingly reduce all contributions, or if the employers agree thereto at least those of the members of the fund. The same applies to miners' associations or miners' funds as regards invalidity and old age relief.

PAR. 2. Benefits provided under the rules of the constitution which the fund had granted before the decision of the competent authorities or before January 1, 1891, may not be reduced.

PAR. 3. The requisite orders for this purpose are to be introduced by the funds through amendments to the constitution; these must be approved

## Code of January 1, 1913

by the competent authority. The authorities can themselves validly inaugurate amendments if the fund declines the application of the employers affected or of a majority of the members.

PAR. 4. The contributions need not be reduced if the savings made in the payment of these benefits are either necessary in order to cover the outstanding benefits of the fund, or are used according to the constitution and with the approval of the supervisory authority for the purpose of the welfare institutions for establishment officials, workmen, or their survivors.

PAR. 5. In the case of paragraph 3, sentence 2, the Federal Council shall specify the procedure before the imperial supervisory office for private insurance.

## ARTICLE 1322

PARAGRAPH 1. The benefits which miners' associations or miners' funds grant to the survivors of their members insured according to the imperial law shall be reduced by one-half of the value of the benefits of the same kind given under imperial law. The benefits including the amounts received according to the imperial law must exceed by not less than the amount of the imperial subsidy the benefits granted according to the constitution without the deduction. Corresponding to the reduction of the benefits all of the contributions must be reduced, or if the employers agree thereto at least the contributions of the members. In controversies regarding the extent of the reduction of the contributions the supervisory authority shall decide.

PAR. 2. The constitution may specify that the benefits and correspondingly the contributions may be reduced by a smaller amount or shall not be reduced at all.

PAR. 3. Benefits under the constitution which have been granted before the decision of the competent authorities or before this provision enters into force may not be reduced.

## ARTICLE 1323

Article 1281, No. 2, and articles 1321 and 1322 shall also be applicable to such funds required to provide invalidity, old age, and survivors' relief for which membership is compulsory under local laws.

## ARTICLE 1324

Pension claims may only be reduced by deducting from them the following:

Claims for reimbursement on account of accident pension and com-

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Code of January 1, 1913

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pensation paid in so far as the insurance institute has a claim thereon according to article 1522, paragraph 3, and article 1542;  
Arrears of contributions;  
Advances paid out;  
Pension amounts paid without right;  
Reimbursement of costs of procedure;  
Fines imposed by the insurance institutes.

#### ARTICLE 1325

Subject to the conditions of article 119, paragraph 2, widows' money and orphans' settlements may not be transferred, executed, pledged, or reduced.

### SECTION THREE.—CARRIERS OF THE INSURANCE

#### A. INSURANCE INSTITUTES

##### I. EXTERNAL FEATURES

##### 1. *Establishment*

#### ARTICLE 1326

PARAGRAPH 1. Insurance institutes shall be established for the territory of the federal State for the unions of communes or other parts of territory in accordance with the provisions of the State governments.

PAR. 2. For several federal States or parts of their territory as well as for their unions of communes a common insurance institute may be established.

PAR. 3. Insurance institutes which have been established under the law of June 22, 1899, shall retain their present status subject to the changes permissible under articles 1332 to 1337.

#### ARTICLE 1327

The establishment of the insurance institute shall require the approval of the Federal Council. If the council refuses this approval, then after a hearing of the State governments affected, it can itself order the establishment of the institute.

#### ARTICLE 1328

The State government shall specify the seat of insurance institute. If the insurance institute extends over several federal States, then the State governments affected shall specify the seat.

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Code of January 1, 1913

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*2. Local competence*

## ARTICLE 1329

The insurance institute shall include all persons employed in its district (arts. 153 to 156) who do not comply with their insurance obligation in the special institutes. If persons are employed in an establishment whose seat is located in the district of another insurance institute, then with the approval of the insurance institute affected they may also be insured in the institute of the seat of the establishment. The members of an establishment sick fund must, upon application of the employer, be insured at the seat of the establishment.

## ARTICLE 1330

If an establishment which has its seat in Germany employs temporarily persons in a foreign country, these persons must be insured in the insurance institute of the seat of the establishment.

## ARTICLE 1331

Subject to other provisions of the Federal Council, the place of employment of foreign vessels engaged in inland navigation shall be considered to be in the seat of that insurance institute in whose district the vessel first enters when crossing the boundary.

*3. Changes in the districts*

## ARTICLE 1332

PARAGRAPH 1. The districts of the insurance institute may be changed if the committee (art. 1351) or a federal State affected applies therefor and the Federal Council approves. Before making the decision, the committees and State governments affected shall be heard. In the case of insurance institutes for the districts of unions of communes, their representatives may also apply for changes and must otherwise be heard before changes are made.

PAR. 2. With the approval of the Reichstag insurance institutes may be combined, divided, or dissolved.

## ARTICLE 1333

The district of the insurance institute changes automatically whenever the district of the administration is changed.



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Code of January 1, 1913

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## ARTICLE 1334

If local districts separate themselves from an insurance institute, then the latter shall retain their assets and the existing obligations.

## ARTICLE 1335

If an insurance institute is dissolved, then the State governments affected may transfer to the institutes receiving the same, the assets with all the right and duties, or it may approve the assumption of the same by another institute. Otherwise the assets shall be transferred to the unions of communes or federal States affected, and in the case of common institutes shall be divided pro rata.

## ARTICLE 1336

If in the case of the dissolution of a common insurance institute the unions of communes or the federal States cannot agree as to the shares of the assets to be turned over to them, then the Federal Council shall decide herein or in case only unions of communes of one federal State are affected, the highest administrative authority.

## ARTICLE 1337

In controversies between the insurance institutes in regard to the distribution of assets, the decision senate of the Imperial Insurance Office or of the State insurance office (art. 1382) shall decide, in the absence of an agreement to secure a decision from an arbitration court.

## II. INTERNAL FEATURES

*1. Constitution*

## ARTICLE 1338

The committee shall decide upon the constitution. It must give the seat and district of the insurance institute and must specify the following:

1. Name of the insurance institute;
2. Number of representatives of the employers and of the insured persons in the directorate;
3. Subjects concerning which the coöperation of the representatives of the employers and insured persons in the directorate is required in discussion and in decisions;
4. Number of members, summoning, rights and duties of committees, appointment of its chairman, manner of making de-

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Code of January 1, 1913

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- cisions, as well as representation as to third parties in the case of article 1354, paragraph 1, sentence 1;
5. Form of the declaration of the decisions of the directorate as well as its signature on behalf of the insurance institute, manner of making decisions of the directorate, and its representation as to third parties;
  6. Representation of the institute as against the directorate;
  7. Size of allowances according to article 21, paragraphs 2 and 3;
  8. Drawing up preliminary estimates;
  9. Drawing up and accepting the annual balance sheet in so far as the higher administrative authorities do not provide therefor;
  10. Publication of the accounts;
  11. Method of publishing notices;
  12. Provisions as to the amendment of the constitution.

## ARTICLE 1339

The constitution must have the approval of the Imperial Insurance Office or of the State insurance office (art. 1382). If the approval is to be refused, then the decision senate shall decide thereon. The reasons for the refusal are to be stated. If the approval is refused, then the Federal Council shall decide upon appeal.

## ARTICLE 1340

If the refusal is finally refused, then within the time specified by the Imperial Insurance Office or the State insurance office the committee must decide upon a new constitution. If they reach no decision or if the new constitution is likewise not approved finally, then the Imperial Insurance Office or the State insurance office shall issue a constitution and decree the necessary steps for its execution at the cost of the institute.

## ARTICLE 1341

The constitution may be amended only with the approval of the Imperial Insurance Office or the State insurance office. If the approval is to be refused, then the decision senate shall decide thereon. The reasons for refusal are to be stated. If the approval is refused, the Federal Council shall decide upon appeal.

*2. Directorate*

## ARTICLE 1342

The directorate shall administer the institute in so far as the law or constitution do not provide otherwise.

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Code of January 1, 1913

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## ARTICLE 1343

The directorate shall have the powers of a public authority. One or more officials of the union of communes or of the federal State for which the insurance institute has been created shall conduct its business.

## ARTICLE 1344

PARAGRAPH 1. The unions of communes or highest administrative authority shall, according to the provisions of the State law, appoint the official members of the directorate and shall designate one of them as chairman.

PAR. 2. If the insurance institute extends over several unions of communes, then the highest administrative authority or the unions of communes designated by the latter shall take this action.

PAR. 3. If the insurance institute extends over several federal States, then the highest administrative authorities affected shall decide in regard to the appointment of the official members of the directorate.

## ARTICLE 1345

Article 33 shall not apply as regards the service relations of the official members of the directorate (art. 1344).

## ARTICLE 1346

PARAGRAPH 1. As nonofficial members, there shall belong to the directorate representatives of the employers and of the insured persons in equal numbers. They must reside in the district of the insurance institute.

PAR. 2. If the number of official members is greater than the number of nonofficial members, then in making the decisions that number of official members shall separate themselves as will arrange that the non-official members are in a majority. The constitution shall regulate the details hereto.

## ARTICLE 1347

The constitution can provide that still other salaried or unsalaried members shall belong to the directorate. The committee shall specify the conditions of appointment of the salaried members. Article 1346, paragraph 2, is here correspondingly applicable.

## ARTICLE 1348

In so far as the office, accounting and subordinate officials employed by the institute who are not substitutes are not State or communal

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Code of January 1, 1913

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officials according to State law, then the State government shall confer upon them the rights and duties of State or communal officials.

#### ARTICLE 1349

The insurance institute shall provide for the salary, etc., of the officials and subordinates as well as their survivors.

#### ARTICLE 1350

The directorate shall publish in the *Reichsanzeiger* and in the official gazette of the highest administrative authority the name, seat, and district of the insurance institute as well as the name of the chairman and, in addition, the changes therein.

#### *3. Committee*

#### ARTICLE 1351

PARAGRAPH 1. Each insurance institute shall have a committee. It shall consist of one-half each of representatives of employers and of the insured persons and shall comprise at least 10 members.

PAR. 2. The latter shall be elected by the insurance representatives in the local insurance offices of the district of the insurance institute, and the representatives of the employers and of the insured persons shall be elected in separate elections.

PAR. 3. The representatives must reside in the district of the insurance institute.

#### ARTICLE 1352

PARAGRAPH 1. The highest administrative authority shall issue election regulations and shall conduct the election through an authorized representative. If the insurance institute extends over several federal States, the highest authorities affected shall specify which of them shall conduct the same.

PAR. 2. For each representative at least two substitutes shall be elected. They shall take his place if he is unable to fulfill his duties, and, if he leaves the institute, they shall fill the office for the rest of the term in the order of their election.

PAR. 3. In controversies over elections, that authority shall decide which is to issue election regulations.

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Code of January 1, 1913

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## ARTICLE 1353

The following matters are reserved to the committee:

1. Election of the nonofficial members of the directorate;
2. The determination of the preliminary estimates;
3. The acceptance of the annual balance sheet;
4. The amendment of the constitution.

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ARTICLE 1354

PARAGRAPH 1. In purchasing, selling, or mortgaging pieces of ground valued at more than 1,000 marks [\$238], the institute shall be represented by the directorate and by the committee. In so far as matters relate to the purchase at compulsory sales of pieces of ground on which the insurance institute has made loans, the directorate alone shall be authorized to act as representative.

PAR. 2. The directorate must obtain the consent of the committee to form reinsurance federations.

## ARTICLE 1355

The preliminary estimates must be placed before the supervisory authority at least two weeks before the committee decides thereon. It must correct the estimate if it violates the law or constitution or endangers the solvency of the insurance institute as regards the legal obligation resting upon it. If the committee does not consider the objections, then the chairman of the directorate must appeal to the supervisory authority (art. 8). He is required to take this action if the supervisory authority demands the same. The decision senate decides thereon.

*4. Administration of the assets*

## ARTICLE 1356

PARAGRAPH 1. The insurance institute must invest at least one-fourth of its assets in bonds of the Empire or of the federal States.

PAR. 2. The institute may invest not more than one-half of its assets otherwise than as specified in articles 26 and 27. For this purpose it shall secure the approval of the Imperial Insurance Office or of the State insurance office (art. 1382).

PAR. 3. If an insurance institute desires to invest more than one-quarter of its assets according to paragraph 2, it shall also secure thereto the approval of the communal union or of the highest administrative authority. If the district of the insurance institute extends over several

## Code of January 1, 1913

States, then the approval of their highest administrative authorities is required.

PAR. 4. Such investment (pars. 2 and 3) is permissible only in securities and in other ways only for purposes of administration, to avoid the loss of assets or for undertakings which exclusively or principally accrue to the welfare of those subject to the insurance.

## ARTICLE 1357

Approval (art. 1356, pars. 2 and 3) is required in the following cases:

For the purchase of pieces of ground valued at more than 5,000 marks [\$1,190];

For the erection of buildings valued at more than 10,000 marks [\$2,380];

For the purchase of necessary articles of furniture, the total value of which is more than 5,000 marks [\$1,190].

PAR. 2. Approval is not necessary for the purchase of pieces of ground in the cases mentioned in article 1354, paragraph 1, sentence 2.

## ARTICLE 1358

PARAGRAPH 1. The Imperial Insurance Office shall regulate the method and form of the accounting.

PAR. 2. The insurance institutes must make reports to the Imperial Insurance Office in regard to their business and finances according to the order of the latter. The Imperial Insurance Office shall each year draw up a report concerning the total financial operations of the preceding fiscal year and must lay the same before the Reichstag.

*5. General provisions*

## ARTICLE 1359

PARAGRAPH 1. If the directorate or the committee has not been formed or if they refuse to carry on their business, then the chairman of the directorate himself or through authorized agents shall conduct the business at the cost of the insurance institute.

PAR. 2. In so far as the election of representatives does not take place or if they decline to perform their duties, the chairman of the local insurance office shall appoint them from among the eligible persons.

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Code of January 1, 1913

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## B. SPECIAL INSTITUTES

*1. General provisions*

## ARTICLE 1360

PARAGRAPH 1. Upon application of the competent authority, the Federal Council shall specify which institutes of the Empire, of a federal State, or of a union of communes, shall be admitted as special institutes and the date thereof.

PAR. 2. Upon application the Federal Council may also admit other special institutes.

PAR. 3. The special institutes must comply with the conditions specified in articles 1361 to 1366.

## ARTICLE 1361

The benefits of the special institutes must be of at least equal value with the legal benefits of the insurance institute.

## ARTICLE 1362

The contributions of the insured persons for the benefits of the imperial law may only exceed one-half of the legal amount (art. 1392) if it is necessary through the special manner of computation of the special institute in variance with article 1389. They may also not be higher than the contributions of the employers.

## ARTICLE 1363

In the administration of the special institutes insured persons must participate by representatives who have been designated in a secret election. Their number must be not less than that corresponding to the ratio of the contributions of the insured persons to those of the employers.

## ARTICLE 1364

In computing the waiting term and the pension for a claim according to the imperial law the period of contributions during membership in other special institutes and insurance institutes must be included.

## ARTICLE 1365

The procedure as regards the claims to invalidity, old age, and sur-

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Code of January 1, 1913

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vivors' benefits, corresponding to the benefits of the imperial law, must be regulated according to the provisions of this law.

#### ARTICLE 1366

If the special institute collects special or increased contributions for the benefits of the imperial law, then they may add these to their other benefits only in so far as they add to each pension of the imperial law at least the amount of the imperial subsidy.

#### ARTICLE 1367

Membership in a special fund institution (*besondere Kasseneinrichtung*) admitted to insurance (arts. 8, 10, and 11 of the invalidity insurance law), or in a special institute, shall be considered as equal to insurance in an insurance institute.

#### ARTICLE 1368

The special institutes receive the imperial subsidy to their benefits according to the imperial law.

#### ARTICLE 1369

For the pension of a person insured in a special institute, that wage class for each week of membership after January 1, 1891, shall be used to which they would have belonged on the basis of their actual wages had they belonged to an insurance institute. If they were at the same time members of a sick fund or a miner's fund, then the wage class shall be arranged according to article 1246, paragraph 2, No. 1 or 3, and article 1247.

#### ARTICLE 1370

If the special institute does not collect the contributions by means of stamps, then for persons leaving, it must certify the duration of their participation and their wage class as well as the duration of the periods of military service and sickness (arts. 1393 and 1394). The Federal Council may specify the form and contents of the certificate.

#### ARTICLE 1371

Persons entitled to insurance in establishments for which a special institute exists may insure themselves only in the latter voluntarily, and in the case of leaving the employment can continue the insurance only in the special institute (art. 1243). Persons subject to insurance engaged in such establishments may, if they leave their employment without



becoming subject to the insurance elsewhere, extend their insurance only in the special institute (art. 1244).

### ARTICLE 1372

In the case of a special institute, the following provisions are correspondingly applicable:

#### I. Provisions of Book One concerning—

1. The accounting bureau (art. 103);
2. Legal remedies (arts. 115 to 117);
3. Transferring, assigning, and execution of claims (arts. 119);
4. Time limits (arts. 124 to 134);
5. Fees and stamp taxes (arts. 137 and 138);

#### II. Provisions of Book Four concerning—

6. Medical treatment (arts. 1296 to 1274);
7. Withdrawal of the invalidity, widows' and widowers' pensions (arts. 1304 to 1309);
8. Suspension of the pension and settlement in form of a capital sum (arts. 1311 to 1318);
9. New determination and demand for the return of the pension sums (arts. 1319 and 1320);
10. The relations of the claims of persons insured under the imperial law to the claims of miners' associations or miners' funds, factory funds, seamen's funds, and similar funds (arts. 1321 and 1322);
11. Deductions from claims (arts. 1324 and 1325) and transferring, execution, and assigning of widows' money and orphans' settlements (art. 1325);
12. Changes in the districts (arts. 1322 to 1337);
13. Obligation regarding the investment of at least one-fourth of the assets in the bonds of the Empire or of the federal States, and the reporting of accounting operations to the Imperial Insurance Office (art. 1356, par. 1, and art. 1358, par. 2);
14. Payments through the Post Office Department (arts. 1383 to 1386) in so far as the special institutes do not make payments directly;
15. The general cost and the special cost (arts. 1395 to 1399) and reinsurance federations (art. 1401);
16. Distributions and payments of the insurance benefits and the transferring of the sums to the post office (arts. 1403 to 1410);

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Code of January 1, 1913

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17. Payment of the contributions for a previous period (arts. 1442 to 1444);
  18. The decision in controversies in the case mentioned in article 1460; .
  19. The voluntary additional insurance (arts. 1472 to 1483).
- III. The provisions of Book Five concerning—
20. The relations of the carriers of the sickness and of the accident insurance to the carriers of the invalidity and survivors' insurance (arts. 1518 to 1526);
  21. The relations to other parties liable to pay benefits in so far as they are regulated in articles 1527, 1531, 1536 to 1543.

#### ARTICLE 1373

The Empire or the union of communes affected is liable for the benefits if the special institute serves their establishments; otherwise the federal State of the seat of the establishment is liable. If several federal States participate, then they are liable in shares according to the number of insured persons who at the close of the last fiscal year were employed in the establishments. In like manner, the liability is regulated as concerning the distribution of assets (arts. 1334 to 1336).

#### ARTICLE 1374

PARAGRAPH 1. For the determination of the amount which the special institute shall turn over to the general assets, the contributions shall be decisive (art. 1392). The benefits of the special institute shall be distributed only in so far as they correspond to the provisions of the imperial law.

PAR. 2. The imperial subsidy shall at the close of each fiscal year be paid over to the special institutes which make their payments themselves without the intervention of the post office.

#### *2. Special institute of the navigation accident association*

#### ARTICLE 1375

Upon the decision of the Federal Council, the navigation accident association may create on its own liability a special institute corresponding to the provisions of the imperial law. It must include the persons who are employed in the establishments of the association or in single kinds of these establishments and also the undertakers who at the same time are subject to the accident insurance and invalidity, and survivor's insurance. Both groups are insured in the special institute by authority of the law.

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Code of January 1, 1913

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## ARTICLE 1376

If the insured persons are called on for contributions, then they are to participate in the administration in the same manner as employers.

## ARTICLE 1377

The employers' share in the contributions may on the average be not less than one-half of the legal contributions (art. 1392). The contributions of the insured persons may not be higher than those of the employers.

## ARTICLE 1378

PARAGRAPH 1. If the contributions of the insured persons are graded, then the pensions for the survivors are to be correspondingly graded.

PAR. 2. The waiting term may not be longer than that of the Imperial law.

## ARTICLE 1379

The special institute of the navigation accident association shall have in other respects the same status as other special institutes. Articles 1355 to 1358 shall apply to it without restriction. It shall be subject to the supervision of the Imperial Insurance Office.

## ARTICLE 1380

PARAGRAPH 1. The creation of the special institute, its constitution, and the amendment thereof shall require the approval of the Federal Council. It shall make the decision after having heard the nonpermanent members of the Imperial Insurance Office, elected for the scope of the navigation insurance as representatives of the employers and the insured persons.

PAR. 2. The Federal Council shall specify the date on which the institution shall come into operation.

## SECTION FOUR.—SUPERVISION

## ARTICLE 1381

The Imperial Insurance Office shall conduct the supervision of the insurance institutes.

## ARTICLE 1382

If a State insurance office has been created for a federal State, then it shall conduct the supervision of the insurance institutes which do not extend beyond its territory.

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Code of January 1, 1913

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## SECTION FIVE.—PAYMENT OF THE BENEFITS—RAISING OF THE FUNDS

## I. PAYMENT THROUGH THE POST OFFICE DEPARTMENT

## ARTICLE 1383

PARAGRAPH 1. The institute shall make payments upon notification of the directorate through the Post Office Department and furthermore as a rule through that post office in whose district the payee resides. The payee shall be notified of the paying office by the directorate.

PAR. 2. If the payee removes his residence, he may make application to the directorate or to the post office of his old place of residence to have the payments changed to his new place of residence.

## ARTICLE 1384

Every person who is entitled to keep a public seal is authorized to give out and attest the requisite certificates in such payments.

## ARTICLE 1385

The highest postal authorities may collect from each insurance institute an advance sum. According to the choice of the insurance institute, it shall be transmitted either quarterly or monthly to the offices designated by the Post Office Department and may not be greater than that amount which the insurance institute will probably have to pay in the current fiscal year.

## ARTICLE 1386

The Imperial Insurance Office can specify in what manner payments are to be made to the payees who customarily reside in a foreign country.

## II. RAISING OF THE FUNDS

1. *General provisions*

## ARTICLE 1387

PARAGRAPH 1. The Empire, the employers, and the insured persons shall provide the means for the insurance.

PAR. 2. The Empire shall pay subsidies for the pensions, widows' money, and orphans' settlements (art. 1285) actually paid in each year; the employers and the insured persons shall pay for each week of employment subject to insurance (contributory week) current contributions in equal parts (arts. 1432, 1439, 1458).

PAR. 3. The contributory week begins with Monday.

Code of January 1, 1913

*2. Size of the contributions*

## ARTICLE 1388

The weekly contributions shall be determined uniformly in advance by the Federal Council at the first for the period up to December 31, 1920, and then afterwards according to the result of the examination (art. 1391) for a further period of 10 years. Changes shall require the approval of the Reichstag. •

## ARTICLE 1389

For the determination of the size of the contributions, the annual average contribution shall be computed for the total number of insured persons. It shall be computed in such a manner that the value of all future contributions together with the assets shall cover that amount which is required according to the actuarial computation with the interest and compound interest to defray all future expenditures of the insurance institutes.

## ARTICLE 1390

PARAGRAPH 1. The average contributions shall be graded according to the wage classes, otherwise, however, shall be fixed exactly the same in weekly partial amounts for the insured persons of the same wage class.

PAR. 2. The grades shall be arranged according to that burden which results from the assumption that each wage class has a corresponding insurance status in the total number of insured persons and has the same risk, and that for these groups, the pensions, widows' money, and orphans' settlements will occur in the expected amount in the wage classes.

## ARTICLE 1391

PARAGRAPH 1. The accounting bureau of the Imperial Insurance Office shall investigate in advance whether the contribution will be sufficient.

PAR. 2. Deficits or surpluses must be equalized through new contributions.

## ARTICLE 1392

Until further action the following shall be collected as weekly contributions:

	Pfennigs.
In wage class I. ....	16 [\$0.038]
In wage class II. ....	24 [ .057]
In wage class III. ....	32 [ .076]
In wage class IV. ....	40 [ .095]
In wage class V. ....	48 [ .114]

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Code of January 1, 1913

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*3. Periods of military service and of sickness*

## ARTICLE 1393

PARAGRAPH 1. Without any requirement that the contributions shall be paid, the following shall be added as contributory weeks of Wage Class II in which the insured person—

1. Has been called into service in compliance with his military duty in times of peace, of mobilization, or of war;
2. Has voluntarily rendered military service in times of mobilization or of war;
3. Has been prevented from following his occupation because of an illness which rendered him incapable of work for the time being; the sickness must be certified.

PAR. 2. These weeks, however, shall only be included in the computation for those persons who were regularly employed in an occupation before that time and were not merely temporarily subject to the insurance.

## ARTICLE 1394

PARAGRAPH 1. The sickness shall not be included which the insured person has intentionally brought upon himself or has incurred by an action determined as a crime by the verdict of a criminal court or by culpable participation in brawls or disorderly conduct.

PAR. 2. If the sickness continues without interruption for more than one year, its further duration shall not be included.

PAR. 3. The period of convalescence shall be regarded the same as the sickness. The same shall apply for a period of eight weeks in case of inability to work caused by pregnancy or by regular childbirth without complications.

*4. General cost—Special cost*

## ARTICLE 1395

The insurance institutes shall independently administer their income and other assets (general assets and special assets). They shall cover therefrom the general cost which all carriers of the invalidity and survivors' insurance must jointly defray, and the special costs which fall upon the individual institutes.

## ARTICLE 1396

PARAGRAPH 1. The general cost consists of the following:

The basic amounts of the invalidity pensions and the subsidies for children's pensions (art. 1291);

## Code of January 1, 1913

The shares of the insurance institutes in the old-age pensions, widows' pensions and widowers' pensions, orphans' pensions, widows' money and orphans' settlements.

The increases of the pensions resulting from the weeks of military service and weeks of sickness;

The cost of rounding off the pensions upwards.

PAR. 2. All other obligations form, subject to the reservations of article 1478, a special cost of the insurance institute.

## ARTICLE 1397

For covering the general cost, each insurance institute shall, beginning with January 1, 1912, set aside in its accounts 50 per cent of the contributions as general assets. The institute shall credit the interest to the general assets as set aside in the books. The Federal Council shall specify the rate of interest on a uniform basis for the same periods of time as for contributions.

## ARTICLE 1398

PARAGRAPH 1. If the examination shows (art. 1391) that the general assets are not sufficient to cover the general cost, or are not necessary thereto, then the Federal Council shall specify for the coming period what shall be the share of the contributions which is to be set aside on the books for the balancing of the deficits or surpluses for the general assets.

PAR. 2. If the Federal Council increases this share, then the approval of the Reichstag is required.

## ARTICLE 1399

The existing assets of the insurance institute on hand at the time of the examination may be drawn on to cover the general cost only in so far as they have been set aside on the books for the general cost.

## ARTICLE 1400

PARAGRAPH 1. By joint agreement of the directorate and of the committee, the surplus of the special assets over the legal benefits may be applied for the economic welfare of the pensioners and the insured persons as well as for their relatives.

PAR. 2. The consent of the Federal Council is necessary in such cases. It may revoke the consent, if according to the advice of the accounting bureau, the special assets no longer show a sufficiently high surplus.

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Code of January 1, 1913

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*5. Reinsurance federations*

## ARTICLE 1401

Several insurance institutes may unite in order to carry either wholly or partly the burdens of the invalidity and survivors' insurance in common.

*6. Liability for the obligations of the institute*

## ARTICLE 1402

In so far as the assets of the institute are not sufficient to cover its liabilities the union of communes for which the insurance institute has been created is liable to the creditors. If the union of communes is without assets or if the insurance institute has been created for a federal State or parts of it, then the latter shall be liable. If the institute includes several federal States or unions of communes, then these shall be liable according to the number of their population at the time of the last census.

*7. Distribution and refunding of the insurance benefits—Transferring amounts to the Post Office Department*

## ARTICLE 1403

PARAGRAPH 1. The accounting bureau of the Imperial Insurance Office shall apportion pensions, widows' money, and orphans' settlements upon the Empire, upon the general assets, and upon the special assets.

PAR. 2. The increase rates of the invalidity pensions shall be at the cost of the institute to which contributions on this account have been paid. If the institute has determined benefits, parts of which are a cost on the special assets of other institutes, then the latter shall repay to it the amounts in the form of their capitalized value at the close of the fiscal year.

## ARTICLE 1404

The accounting bureau shall ascertain for each year and for each insurance institute the capitalized value of the pensions still current which it has certified for payment and the shares thereof which are a cost upon the Empire, upon the general assets and the special assets. The Federal Council shall regulate the computation of the capitalized value.

## ARTICLE 1405

Within eight weeks after the expiration of each fiscal year, the highest postal authorities shall communicate to the accounting bureau the amounts which have been paid in the past fiscal year upon authorization



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Code of January 1, 1913

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of the insurance institutes. According to the standard specified in article 1404, the pension advances shall be distributed upon the Empire, upon the general assets and upon the special assets. The accounting office shall further compute the share of the Empire, and of the general assets in connection with the widows' money and the orphans' settlements. The insurance institutes shall participate in the sum which is a charge on the general assets, each institute in proportion to the share of the total cost specified for its assets.

#### ARTICLE 1406

PARAGRAPH 1. The accounting bureau shall notify the insurance institutes of the amounts which they have to repay from the share of their assets intended for the general cost and from their special assets. In such case, the accounting bureau shall balance the payments from the post-office advances (art. 1385) with the actual payments and shall deduct the capitalized value which according to article 1403 the individual institutes must repay to each other.

PAR. 2. The figures used as a basis for making the computations shall be stated. An appeal to the Imperial Insurance Office is permissible against the apportionment of the account.

PAR. 3. The size of the amounts which are a cost to the Empire is to be reported to the imperial chancellor.

#### ARTICLE 1407

The accounting bureau shall notify the highest postal authorities what amounts must be repaid by the Empire and by the individual insurance institutes.

#### ARTICLE 1408

Within two weeks after the receipt of the notification, the insurance institute must pay the amount to the Post Office Department from the means on hand. If such are not on hand; then the union of communes or the federal States shall advance the same, in case of joint insurance institutes, in proportion to the number of inhabitants at the last census.

#### ARTICLE 1409

The amount of the advances to the post office (art. 1385) shall be determined for each insurance institute after the receipt of the communication from the highest postal authority (art. 1405) by the accounting bureau for the current fiscal year, and the insurance institutes and the highest postal authorities shall be notified thereof. Up to that time, the

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Code of January 1, 1913

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partial amounts of the advances to the post office shall be paid further, for the time being, in the amount of the preceding year. They shall be balanced after determination of the new advance to the post office.

## ARTICLE 1410

If the claims of the Post Office Department are not promptly covered by the insurance institutes, then upon application of the Post Office Department the Imperial Insurance Office or the State insurance office (art. 1382) shall institute compulsory collection proceedings.

## SECTION SIX.—PROCEDURE AS TO CONTRIBUTIONS

## I. STAMPS

## ARTICLE 1411

PARAGRAPH 1. For the purpose of collecting the contributions, each insurance institute shall issue stamps containing the designation of the wage class and of the money value.

PAR. 2. The Imperial Insurance Office shall specify the distinguishing marks of the stamps as well as the periods of time for which they shall be issued.

PAR. 3. It may restrict the period of validity of the issued stamps. Within two years after the expiration of the period of validity, stamps which have become invalid may be exchanged at the sales offices.

## ARTICLE 1412

The stamps of each insurance institute shall be sold at the post offices of their district and at the special sales offices of the insurance institutes, at their face value.

## II. RECEIPT CARDS

## ARTICLE 1413

The contributions shall be paid by affixing the stamps on the receipt card of the insured person.

## ARTICLE 1414

The insured person shall have the receipt card made out for him and must produce it punctually for the affixing and cancellation of the stamps. The local police authorities may require him to do this under penalty of a fine up to 10 marks [\$2.38]. If he has no receipt card or if he refuses to

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Code of January 1, 1913

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produce it, then the employer may procure the card and deduct the cost thereof at the next wage payment.

#### ARTICLE 1415

The insured person may at his own cost at any time demand a new card in return for the old.

#### ARTICLE 1416

PARAGRAPH 1. The receipt card shall contain the year and day of its issue and the contents of the provisions contained in articles 1424, 1425, and 1495. The Federal Council shall specify the other matters.

PAR. 2. The Federal Council may prescribe special cards for self-insurance and for its continuation (art. 1243), and may impose penalties for the unauthorized use of other cards.

#### ARTICLE 1417

The cost of the cards shall be borne by the insurance institute of the district of issue if it is not procured for the account of the insured person (arts. 1414 and 1415).

#### ARTICLE 1418

Each card shall contain space for at least 25 weekly stamps. The cards shall be numbered successively for each insured person. The first card shall have at its head the name of the insurance institute in whose district the insured person is employed at the time of the issue, and each following card the name of the preceding (the original institute). If the name of the institute on a card issued later differs from that on the first card, then the name on the first card shall prevail.

#### ARTICLE 1419

PARAGRAPH 1. The highest administrative authorities shall specify, subject to the reservation of article 1456, the offices which shall make out the cards and exchange the same (office of issue.)

PAR. 2. The imperial chancellor shall specify the office of issue in the German protectorate.

PAR. 3. The office of issue shall compute when a card is returned, according to the stamps affixed, the contributory weeks for the individual wage classes. At the same time there must be given the duration of the military service proved and of the sickness certified, which have occurred during the time of the validity of the card. The office of issue shall certify to the owner of the card the totals.

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Code of January 1, 1913

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PAR. 4. The cost for the forms of the certificates concerning the computation shall be borne by the insurance institute of the district of issue.

PAR. 5. The imperial chancellor shall specify who shall bear the cost for the receipt cards and for the forms of the certificates in the German protectorates.

#### ARTICLE 1420

The cards must within two years after their date of issue be handed in for exchange. If this is not done, then in case of controversy the insured person must prove that the claim has been kept alive.

#### ARTICLE 1421

PARAGRAPH 1. Receipt cards which have been lost, made unserviceable, or destroyed shall be replaced by new cards.

PAR. 2. Contributions which can be proved to have been made shall be transferred in certified form; the insurance institute affected shall be heard in advance if the card which has become unserviceable is not produced, and in each case shall be notified later.

#### ARTICLE 1422

The insured person may appeal to the local insurance office against the contents of the certification (art. 1419, par. 3) and against the transfer or the refusal thereof (art. 1421, par. 2). The insurance institutes may also protest against the transfer (art. 1421, par. 2). The local insurance office shall decide finally.

#### ARTICLE 1423

PARAGRAPH 1. The cards which have been handed in shall be transmitted to the insurance institute of the district. After verifying and correcting the entries on the outer side the institute shall forward them to the original institute (art. 1418).

PAR. 2. The original institute may transfer the contents of all cards of the same insured persons to a collective card and preserve the latter instead of the single cards.

PAR. 3. The Federal Council shall specify the details herewith. It shall also specify when and in what respects receipt cards are to be destroyed.

#### ARTICLE 1424

The cards may contain only the statements prescribed by law and may carry no special marks; above all the card may not contain anything in re-

Code of January 1, 1913

gard to the conduct or services of the holder. Cards which violate this provision must be retained by each authority receiving them and must be replaced by new cards. The contributions proved shall be transferred in certified form. The insurance institutes affected shall be notified hereof.

## ARTICLE 1425

PARAGRAPH 1. No one may retain a receipt card against the will of the owner. This shall not apply for the competent offices if they retain cards for the purpose of exchange, of correction, of computation, of transfer, of supervision of the contributions, or in a collection procedure.

PAR. 2. Whoever retains cards in violation of this provision is responsible to the owner for the damages arising therefrom. The local police authority shall collect the card and turn it over to the owner entitled thereto.

## III. PAYMENT OF CONTRIBUTIONS THROUGH THE EMPLOYER—PROOF OF MILITARY SERVICE AND OF SICKNESS

## ARTICLE 1426

PARAGRAPH 1. The employer who has employed the insured person through the contributory week shall pay the contribution for himself and for the insured person.

PAR. 2. If several employers employ the insured person during the week, then the first of them shall pay the whole amount. If neither he nor the insured person himself has paid the contribution (art. 1439), then the next employer must pay the contribution, but can demand reimbursement from the first employer. If the insured person is employed in occupations subject to insurance at the same time by several employers, then they shall all be liable as joint debtors.

## ARTICLE 1427

PARAGRAPH 1. If the actual time of work can not be determined, then the contribution is to be paid for the time which is approximately requisite for the work. In case of controversy, upon application of one party the local insurance office shall decide finally.

PAR. 2. The insurance institute may, with the approval of the Imperial Insurance Office or of the State insurance office (art. 1382), issue special regulations for the computation.

## ARTICLE 1428

PARAGRAPH 1. The employer shall pay the contributions at the time of the wage payment by affixing for the duration of the employment,

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Code of January 1, 1913

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stamps according to the wage class of the insured person on the receipt card. The cards shall be issued by the insurance institute of the place of employment.

PAR. 2. The employer must procure the cards at his own expense.

PAR. 3. If a payment of wages does not take place, the stamps are to be affixed at the latest when the employment ceases.

#### ARTICLE 1429

In the case of insured persons who by contract are obliged to work for the employer for at least a quarter of a year, the employer may affix the stamps at another time, at the latest in the last week of each quarter. In every case the stamps are to be affixed at the end of the employment.

#### ARTICLE 1430

The insurance institute may permit the employers to affix the stamps at another time.

#### ARTICLE 1431

The stamps must be canceled. As the date of cancellation, the last day of that period shall be given to which the stamp applies. The Federal Council shall specify the details in this connection, and shall impose penalties for contraventions.

#### ARTICLE 1432

PARAGRAPH 1. The persons subject to the insurance must at the time of payment of wages permit the deduction from their cash wages of one-half of the contributions, and whoever is insured at a higher amount than the wage class specified in the law, without having agreed with the employer as to the insurance in a higher wage class, must also permit the deduction of the excess amount. Only in this way may the employers reimburse themselves for the share of the contribution of the insured persons.

PAR. 2. The deductions are to be distributed evenly upon the wage periods.

#### ARTICLE 1433

If deductions are not made at the time of a wage payment, then they may be made only at the time of the next payment, unless the employer through no fault of his own at a later time pays valid contributions (art. 1442).

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Code of January 1, 1913

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## ARTICLE 1434

Payments on account shall not be considered as wage payments in the meaning of articles 1428, 1432, and 1433. In every case, however, the stamps are to be affixed in the last week of each quarter.

## ARTICLE 1435

PARAGRAPH 1. If they pay the contributions in stamps, the employers against whom an order of the local insurance office, according to article 398, has been issued may make wage deductions only for the period for which they have already paid arrears of contributions and can prove the same.

PAR. 2. Where a collection procedure is in existence, the order under article 398 shall also be applicable for the contributions of the invalidity and survivors' insurance. The insured persons must in such cases themselves pay their share of the contribution on the pay days.

## ARTICLE 1436

The Federal Council shall regulate the collection of the contributions for persons subject to insurance according to articles 1228 and 1229.

## ARTICLE 1437

The highest administrative authorities may specify how the share of the contribution of persons subject to insurance shall be deducted from their pay if the latter consists only of payments in kind or is to be paid by third persons.

## ARTICLE 1438

PARAGRAPH 1. Military service which has been rendered shall be proved by the military papers.

PAR. 2. Weeks of sickness shall be proved by certificates. After the expiration of the sick benefits or of the relief during the convalescence the directorate of the sick fund, of the substitute fund, of the mutual insurance association, or of the aid society created according to the provisions of State law shall make out the certificate. Otherwise the directorate of the commune shall perform this act. The local insurance office may require the directorate of the fund or of the mutual insurance association to fulfill this obligation under penalty of fines up to 100 marks [\$23.80].

PAR. 3. For persons employed in Imperial and State establishments the service authority in charge may make out the certificates. In such cases the sick fund is to be released by the local insurance office from the duty of filling out the certificates.

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Code of January 1, 1913

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## IV. PAYMENT OF THE CONTRIBUTIONS BY THE INSURED PERSONS

## ARTICLE 1439

PARAGRAPH 1. The insured person himself may also pay the full contributions. The employer must reimburse him for one-half thereof, and this shall be one-half of the legal contribution, unless an agreement has been made as to insurance in a higher wage class.

PAR. 2. A claim shall exist only if the stamps have been canceled according to regulations. The claim must be raised not later than at the time of the second wage payment following, unless the insured person through no fault of his own has paid effective contributions at a later time.

## ARTICLE 1440

PARAGRAPH 1. Subject to the provisions of article 1371, persons voluntarily insured shall make use of the stamps of the insurance institute in whose district they are employed or in which they remain if unemployed. The choice of the wage class shall be made by themselves.

PAR. 2. They may continue the insurance while in a foreign country, and in such cases make use of the stamps of any insurance institute which they prefer.

PAR. 3. Stamps of an insurance institute may not be used for the extension of the insurance in a special institute (art. 1371).

## ARTICLE 1441

Whoever insures himself voluntarily during an employment for compensation but not paid in cash, or in case of a temporary employment (arts. 1227 and 1232), shall have a claim to the share of the contribution of the employer. The latter may decline to refund more than he is legally required (arts. 1245 to 1247).

## V. CONTRIBUTIONS NOT VALID

## ARTICLE 1442

PARAGRAPH 1. Compulsory contributions are not valid if they are paid after the expiration of two years, but in case the payment of contributions has not been made without the fault of the insured person, then after the expiration of four years after the date when they are due.

PAR. 2. A fault of the insured person shall not exist if the employer has retained the receipt card and has not exchanged it in compliance with the regulations at the proper time.



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Code of January 1, 1913

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## ARTICLE 1443

Voluntary contributions and contributions in excess of the legal wage class may not be paid for a previous period for more than one year, nor may they be paid after the beginning of permanent or of temporary invalidity, or for the continuation of the invalidity.

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ARTICLE 1444

PARAGRAPH 1. If the contributions are later on paid within a suitable time, then they shall have the same status as the payment of contributions in the meaning of articles 1442 and 1443, in the following cases:

1. When a warning has been given to an employer by the competent office;
2. When the employer or the insured person has declared to such an office that he is ready to pay arrears.

PAR. 2. There shall not be included in the periods specified in articles 1442 and 1443 those periods of time in which a controversy regarding contributions (arts. 1459 to 1461), or a procedure relating to a claim, to an invalidity pension, old-age pension, widow's pension, or widower's pension, is in question.

PAR. 3. These facts (pars. 1 and 2) shall also interrupt the lapsing of arrears of contributions (art. 29).

## ARTICLE 1445

PARAGRAPH 1. If the stamps on a receipt card properly made out and handed in for exchange at the proper time have been employed according to regulations, then it shall be assumed that an insurance status existed during the contributory weeks covered thereby. This shall not apply if the stamps have been affixed later than one month after the date on which the contributions are due or for the calendar year have been affixed in a larger number than the year contains contributory weeks.

PAR. 2. The insured person may demand from the insurance institute the determination of the validity of the stamps which have been used. If the insurance institute acknowledges the insurance obligation or the right to insurance, then the claim for a pension may not be disallowed on the ground that the stamps have been used without right.

PAR. 3. After the expiration of 10 years after the computation of the receipt cards, the legal validity of the stamps certified in the computation may no longer be contested, unless the insured person or his representatives, or a person required to provide relief for him, has brought about the use of the stamps with a fraudulent intent.

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Code of January 1, 1913

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## VI. CONTRIBUTIONS PAID IN ERROR

## ARTICLE 1446

PARAGRAPH 1. Contributions which have been paid under a mistaken assumption that an insurance obligation exists, and the return of which has not been demanded, shall be considered as paid for self-insurance or continuation of insurance if a right thereto existed at the time of payment.

PAR. 2. Within 10 years after their payment, the insured person may demand the return of the contributions, if a valid pension has not already been granted to him and if the use of the stamps has not been made with fraudulent intent.

PAR. 3. The employer may no longer demand the return of the contributions if the value of his share has been returned to him by the insured person or if two years have elapsed since the payment.

## VII. COLLECTING THE CONTRIBUTIONS

## ARTICLE 1447

PARAGRAPH 1. The highest administrative authority may, after a hearing of the insurance institute, order that the sick funds, miners' associations, or miners' funds, or other offices designated by it or local collecting offices of the insurance institute, shall collect the contributions of all or of separate groups of persons subject to the insurance for the account of the institute. The authority may in such cases regulate the duty of the insured person to report himself.

PAR. 2. With the approval of the highest administrative authority, the insurance institute may through its constitution itself order this procedure; in addition a commune or a union of communes, with the approval of the higher administrative authority, may after a hearing of the institute order this to be done through a local regulation.

## ARTICLE 1448

If local collecting offices are to be instituted, then the institute must create them at their own cost and in the places specified by the higher administrative authority.

## ARTICLE 1449

The insurance institute must grant a collection fee to the offices of collection; in case the parties affected can not agree, the fee shall be fixed by the highest administrative authority.

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Code of January 1, 1913

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## ARTICLE 1450

With the approval of the sick fund the highest administrative authority can also permit the collection of the contributions for the sick fund by the local collecting offices. The fund shall assume a part of the cost. The details in this connection shall be specified by the highest administrative authority after a hearing of the insurance institutes and sick funds affected.

## ARTICLE 1451

The highest administrative authority shall regulate the powers of the insurance institutes as against the offices of collection not created by itself.

## ARTICLE 1452

In case of voluntary insurance the collection of the contributions may not be prescribed.

## ARTICLE 1453

PARAGRAPH 1. The highest administrative authority may regulate the details as to the procedure in collecting, using, and accounting of the contributions.

PAR. 2. As a rule the contributions shall be collected at the same time with those of the sick funds on the date when they are due. In the case of insured persons from whom the sick fund collects no contributions, the office of collection shall specify the date. Stamps shall be affixed on the receipt card for the contributions collected. Article 1414 is here correspondingly applicable.

## ARTICLE 1454

PARAGRAPH 1. Even in cases where the procedure of collection has been specified, the highest administrative authority or the directorate of the insurance office may permit individual employers themselves to pay the contributions by the use of stamps, according to articles 1426 to 1430. These authorizations are to be communicated to the office of collection.

PAR. 2. Authorities of the Empire, of the States, and of the communes may also exclude themselves from the collection procedure. This shall be communicated to the insurance institute and the office of collection.

## ARTICLE 1455

PARAGRAPH 1. The highest administrative authority may order the following:

1. That sick funds, miners' associations, miners' funds, or local collection offices of insurance institutes shall make out and exchange the receipt cards;

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Code of January 1, 1913

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2. That temporary employees (art. 441) shall pay their half of the contribution directly, while the other half shall be paid by the union of communes or the commune, and that the employer shall repay the same; also the corresponding application of articles 453 and following may be ordered.

PAR. 2. For this purpose the insurance institute shall grant a special allowance to the offices designated, and the highest administrative authority shall fix the amount thereof.

#### ARTICLE 1456

PARAGRAPH 1. The procedure of collection may be prescribed for the members of a sick fund by its constitution, for the members of the sick fund of an imperial or a State establishment by the competent service authorities, and the making out and exchange of receipt cards may be transferred to the fund.

PAR. 2. Article 1449 is here not applicable.

#### ARTICLE 1457

PARAGRAPH 1. As long as a person is insured in the district of an office of collection, he may deposit his receipt card therein.

PAR. 2. The highest administrative authority, in agreement with the insurance institute, may require the deposit. The local insurance office may require the insured persons to follow this course under penalty of fine up to ten marks [\$2.38].

### VIII. ROUNDING OFF THE AMOUNTS

#### ARTICLE 1458

If the reckoning between the employer and insured persons results in a fraction of a pfennig, then the share of the contribution of the employer shall be rounded off to the full pfennig upward and that of the insured person to the full pfennig downward.

### IX. CONTROVERSIES AS TO CONTRIBUTIONS

#### ARTICLE 1459

PARAGRAPH 1. In controversies in regard to the payment of contributions, if such controversy is not first raised at the determination of a pension, the local insurance office shall decide, and upon appeal the superior insurance office shall decide finally. These authorities must follow the principles of the officially published decisions of the Imperial Insurance Office.

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Code of January 1, 1913

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PAR. 2. If the matter relates to the interpretation of legal provisions of fundamental importance which have not yet been passed upon, then the superior insurance office shall transmit the matter, together with a statement of the reasons for its own views to the Imperial Insurance Office: *Provided*, That the appellant has applied therefor within the period of appeal. Other persons affected may also make this appeal within one week after they have been given an opportunity to express their opinions. In these cases the Imperial Insurance Office shall decide instead of the superior insurance office.

#### ARTICLE 1460

If the controversy relates to the question as to which of several insurance institutes is to receive the contributions for specified persons, then upon application the Imperial Insurance Office or the State insurance office shall decide (art. 1382).

#### ARTICLE 1461

All other controversies between employers and workmen in regard to computation and accounting, payment, and reimbursement of contributions (art. 1426, par. 2, arts. 1432 to 1435, 1437, 1439, and 1441) shall be decided finally by the local insurance office.

#### ARTICLE 1462

PARAGRAPH 1. If the controversy has been finally decided, then the local insurance office shall take care that contributions not collected in sufficient amounts shall be covered through stamps at a later time. If too many stamps have been collected and the return of them can still be demanded (art. 1446), the local insurance office shall, upon application, secure their return from the insurance institute and repay them to the parties affected. The stamps shall be destroyed and the computation corrected.

PAR. 2. Stamps which are destroyed because they originated from an insurance institute which was not competent must be replaced by those of the competent institute. Their amount shall be demanded from the institute of issue and paid over to the parties affected.

#### ARTICLE 1463

Instead of destroying the stamps, the local insurance office may call in the receipt card and have the valid contributions transferred to a newly made out card.

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Code of January 1, 1913

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## ARTICLE 1464

If the obligation or the right of insurance is finally denied, then, upon their application, the parties affected shall have returned to them the contributions not yet lapsed. Article 1446 shall not be affected hereby.

## X. SUPERVISION

## ARTICLE 1465

The insurance institute shall supervise the punctual and complete payment of the contributions. The local insurance office may in this connection assist the insurance institute with its agreement and with an understanding as to the costs.

## ARTICLE 1466

PARAGRAPH 1. The employer must give to the local insurance office and to the directorate of the institute itself, as well as to the authorized agents of both, information in regard to the number of employees, their earnings, and duration of their employment. The employers must produce the books and lists from which these facts can be ascertained, during the time of operation and in their place of business. The insured persons also must give information in regard to the place and duration of their employment, as well as of their earnings.

PAR. 2. Both groups are obliged to hand over to the designated officials and agents, upon demand, their receipt cards and certificates (art. 1419, par. 3) for verification and correction, and a receipt must be given therefor.

PAR. 3. The local insurance office may compel the employers and the insured persons to comply with their duties (pars. 1 and 2), under fines up to 150 marks [\$35.70].

## ARTICLE 1467

With the approval of the Imperial Insurance Office, or of the State insurance office (art. 1382), the insurance institute may issue supervisory regulations. These authorities may order the issuance of such regulations, and if such order is not complied with, issue the order themselves. The directorate of the institute may require employers and insured persons to comply punctually with such regulations, under fines up to 150 marks [\$35.70].

## ARTICLE 1468

PARAGRAPH 1. If cash expenditures occur on account of the supervision, then they may be imposed upon the employer if he has caused them

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Code of January 1, 1913

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through neglect of duty. Upon appeal, the superior insurance office shall decide finally.

PAR. 2. Such costs shall be collected in the same manner as communal taxes.

#### ARTICLE 1469

After agreement with the parties interested, or at the close of a procedure in settlement of a controversy, the receipt cards shall be corrected by the supervisory authorities, by the duly authorized agents, or by the offices of collection.

#### ARTICLE 1470

With their consent and with an agreement as to the costs, the local insurance office may assist the insurance institutes in regard to the supervision of pensioners. The decision committee shall make the decision in this connection. If the committee declines, then, on appeal, the superior insurance office shall decide finally.

### XI. SPECIAL PROVISIONS

#### ARTICLE 1471

The Federal Council may replace the provisions of this section in regard to the crews of foreign ships in inland waters by other provisions.

#### SECTION SEVEN.—VOLUNTARY ADDITIONAL INSURANCE

#### ARTICLE 1472

PARAGRAPH 1. Every person subject to the insurance and every person entitled to insurance may at any time and in any number affix supplementary stamps of any insurance institute on their receipt cards. They shall thereby obtain a claim for a supplementary pension in case of invalidity.

PAR. 2. The value of the supplementary stamp shall be 1 mark [23.8 cents].

PAR. 3. The claims procured on the basis of supplementary stamps may not lapse.

#### ARTICLE 1473

PARAGRAPH 1. For every supplementary stamp which the insured person affixes he shall receive as an annual supplementary pension as many times 2 pfennigs [0.48 cents] as at the time of the beginning of the invalidity, years have expired since the use of the supplementary stamp.

PAR. 2. The years shall be counted from the calendar year in which

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Code of January 1, 1913

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the receipt card has been counted up to the year in which the invalidity began. The value of the supplementary stamps which are not included thereby shall be reimbursed to the insured person or to his survivors (art. 1302).

#### ARTICLE 1474

PARAGRAPH 1. The supplementary pension shall be paid as long as the invalidity continues (art. 1255). The decision which withdraws the pension shall become effective at the expiration of the month following the communication thereof.

PAR. 2. Article 1254 shall also apply to supplementary pensions.

#### ARTICLE 1475

The supplementary pension shall always be paid in full sums monthly in advance, each time rounded off upward in sums of 5 pfennigs [\$1.19 cents], and shall be paid either together with the invalidity pension or separately.

#### ARTICLE 1476

PARAGRAPH 1. If the supplementary pension does not amount to more than 60 marks [\$14.28] annually, then upon application a single lump sum payment equal to its capitalized value shall be paid.

PAR. 2. If the beneficiaries give up their residence in Germany, then they may be paid off with the capitalized value of the supplementary pension.

PAR. 3. The computation of the capitalized value shall be regulated by the Federal Council.

#### ARTICLE 1477

Articles 1383 to 1386 shall be applicable as regards the payment of the supplementary pensions and of the single lump-sum settlements.

#### ARTICLE 1478

PARAGRAPH 1. The receipts from the supplementary stamps shall be added to the general assets. The expenditures for supplementary pensions form a part of the general cost.

PAR. 2. The general assets shall bear the liability for the obligations arising out of supplementary insurance.

#### ARTICLE 1479

In order to ascertain the obligations which arise out of the supplementary insurance, the insurance institute shall draw up special summaries from the incoming receipt cards, and these summaries shall show the num-



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Code of January 1, 1913

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ber and the kind of supplementary stamps used and shall serve as the basis for the accounting bureau.

#### ARTICLE 1480

Every 10 years (art. 1388) the accounting bureau of the Imperial Insurance Office shall ascertain how high the rate of the pension may be (art. 1473, par. 1). The Federal Council shall determine it accordingly for every 10 years.

#### ARTICLE 1481

The benefits for a supplementary pension shall be distributed and paid in the same manner as other benefits (arts. 1403 to 1410).

#### ARTICLE 1482

PARAGRAPH 1. Each insurance office shall issue supplementary stamps.

PAR. 2. The Imperial Insurance Office shall specify the distinguishing marks of the stamps. It may also restrict the duration of their validity. The Federal Council shall specify the details in regard to their cancellation.

#### ARTICLE 1483

The regulations which apply for the determination of invalidity and survivors' pensions shall apply in a corresponding manner in the procedure for the determination of supplementary pensions.

### SECTION EIGHT.—FINAL PROVISIONS AND PENAL PROVISIONS

#### I. SICK FUNDS

#### ARTICLE 1484

The provisions of this book as regards sick funds (art. 225 shall also be applicable to miners' sick funds.

#### II. SPECIAL PROVISIONS FOR SEAMEN

#### ARTICLE 1485

Seamen (art. 1046, par. 1) are to be insured in that insurance institute in whose district is located the home port of the vessel.

#### ARTICLE 1486

PARAGRAPH 1. The shipowners may pay the contributions for seamen according to the size of the crew of the single vessels as estimated for the

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Code of January 1, 1913

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accident insurance. The insurance institute shall specify the details in this connection.

PAR. 2. The Federal Council may order a different procedure for the payment of contributions than that provided in this book.

### III. PENAL PROVISIONS

#### ARTICLE 1487

If employers make entries in the reports or statements which they have to make under the provisions of this law or the regulations of the insurance institute, whose incorrectness they knew or under the circumstances must have known, or if they fail to make either wholly or in part the prescribed entries, then the directorate of the institute may impose upon them fines up to 500 marks [\$119].

#### ARTICLE 1488

PARAGRAPH 1. If the employers neglect to use in due time the correct stamps for their employees subject to the insurance or to transmit the contributions, then the directorate of the institute may impose upon them fines up to 300 marks [\$71.40]. Independently of the fine and the collection of the arrears, the directorate may require from persons so penalized the additional payment of 100 up to 200 per cent of these arrears. The amount shall be collected in the same manner as communal taxes.

PAR. 2. The same shall apply if employers who have in their service foreign-insured persons do not comply with their duties as specified in article 1233.

PAR. 3. If the employer contests his obligation to pay contributions, then it shall be decided according to article 1459.

#### ARTICLE 1489

Whoever, contrary to his obligations, does not give notice of the employment of persons subject to the insurance (art. 1447), may be punished by the local insurance office with fines up to 300 marks [\$71.40] in case the action has been intentional, and in case the action has been one of negligence with fines up to 100 marks [\$23.80].

#### ARTICLE 1490

The following persons shall be punished with fines up to 300 marks [\$71.40], or with arrest, provided that under other legal provisions more severe penalties are not imposed:

1. Employers who purposely deduct from the wages of their employees higher contributions than this law permits;

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Code of January 1, 1913

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2. Employers who purposely act contrary to the provisions of article 1435, paragraph 1;
3. Employers who make deductions from wages in the case mentioned in article 1435, paragraph 2, if the local insurance office has issued an order as described in article 398;
4. Employees who purposely deduct more than this law permits;
5. Persons who contrary to law withhold a receipt card from one entitled thereto.

#### ARTICLE 1491

Insured persons shall be punished with fines up to 300 marks [\$71.40], or with arrest, unless severer penalties are provided according to other legal provisions, if they intentionally demand from employers on account of self-paid contributions more than is permissible, or demand the full share of the contribution from several employers for the same week, or do not use the amount collected for the payment of the contributions, or collect shares of contributions, when they did not pay the full contributions.

#### ARTICLE 1492

PARAGRAPH 1. Employers shall be punished with confinement in jail if they intentionally do not use for the insurance, shares of contributions which they have deducted from the wages of their employees or which they have received from the latter.

PAR. 2. In addition, penalties up to 3,000 marks [\$714] and the loss of civic rights can also be imposed.

PAR. 3. If mitigating circumstances are present then the fine alone may be imposed.

#### ARTICLE 1493

The same penal provisions are applicable in the following cases:

1. To the members of the directorate if the employer is a stock company, a mutual insurance association, a registered coöperative society, a guild, or other legal person.
2. To the business directors, if the employer is an association with limited liability.
3. If another type of business corporation is the employer, to all partners personally liable in so far as they are not excluded from the representation.
4. To the legal representatives of employers not legally competent to transact business or partially so, as well as to the liquidators of a business corporation, a mutual insurance association, a registered coöperative society, a guild, or any other legal person.

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Code of January 1, 1913

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## ARTICLE 1494

PARAGRAPH 1. The employer may transfer the duties imposed upon him by this law or by the constitution to the directors of establishments, the supervisory personnel, or other employees of his establishment.

PAR. 2. If such representatives act contrary to those provisions which impose penalties upon the employer, the penalty shall be imposed upon them. In addition to them, the employer is liable to a penalty if—

1. The contravention has occurred with his knowledge.

2. He has not observed the care required customarily in the selection and supervision of his representatives. In this case no other penalty than the fine may be imposed upon the employer.

PAR. 3. The payment of the additional 100 to 200 per cent of the arrears of contributions (art. 1488) can also be imposed upon the representative. In addition to him, the employer shall be liable for this amount if he is punished under the provisions of paragraph 2 above.

## ARTICLE 1495

PARAGRAPH 1. Whoever places upon a receipt card either forbidden entries or special marks may be punished by the local insurance office with fines up to 20 marks [\$4.76].

PAR. 2. The same penalty may be imposed upon the person who falsely fills out the blank spaces (*Vordruck*) on the receipt card or whoever fraudulently alters the words or figures entered in filling out the blank spaces or who knowingly uses such a card.

PAR. 3. Whoever makes entries, marks, or falsifications, with the intention of making known the holder to employers, shall be punished with fines up to 2,000 marks [\$476], or with confinement in jail up to six months. In case of mitigating circumstances arrest may be imposed instead of confinement in jail.

PAR. 4. A prosecution for forgery of documents (arts. 267 and 268, of the Imperial Penal Code) shall only be inaugurated against persons who have made false entries with the purpose of providing for themselves or for others a pecuniary benefit, or with the purpose of causing damage to others.

## ARTICLE 1496

Penalties of imprisonment for not less than three months and in addition loss of civic rights shall be imposed upon the one who makes counterfeit stamps or alters stamps with the purpose of using them as genuine, or whoever with the same purpose provides himself with counterfeit stamps, or uses or offers for sale or brings them into use.

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Code of January 1, 1913

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## ARTICLE 1497

The same penalty (art. 1496) shall be imposed upon whoever makes use of stamps which have already been used, or procures the same for use again again, or offers them for sale, or brings them into use. In case of mitigating circumstances a fine up to 300 marks [\$71.40] or arrest may be imposed.

## ARTICLE 1498

In the cases mentioned in articles 1496 and 1497 steps must be taken for the seizing of the stamps, even if they do not belong to the person condemned. The same must also occur if no specified person can be prosecuted or condemned.

## ARTICLE 1499

PARAGRAPH 1. Whoever manufactures without the written authority of an insurance institute or of another authority the stamp, seals, cuts, plates, or other forms which can be used in the manufacture of stamps, or impressions of such forms, or hands the same over to persons other than the insurance institute or the authorities, shall be punished with a fine up to 150 marks [\$35.70] or with arrest.

PAR. 2. In addition to the fine or arrest, the seizing of the stamps, seals, cuts, plates, or other forms may be ordered, even if they do not belong to the person condemned.

## ARTICLE 1500

On appeal against the penalties imposed by the directorates of the institutes and the local insurance offices the superior insurance office (decision chamber) shall decide finally.

## BOOK FIVE.—RELATIONS OF THE INSURANCE CARRIERS TO EACH OTHER AND TO OTHER BODIES

### SECTION ONE.—RELATIONS OF THE INSURANCE CARRIERS TO EACH OTHER

#### I. SICKNESS INSURANCE AND ACCIDENT INSURANCE

## ARTICLE 1501

PARAGRAPH 1. The obligation of the sick funds (art. 225) to benefits shall not be affected because a carrier of the imperial accident insurance is obligated to compensate damages.

PAR. 2. If according to its obligations under the law or constitution a

## Code of January 1, 1913

sick fund grants benefits on account of an accident for a period during which the beneficiary because of the accident had also a claim for accident compensation or still has such claim, then the fund may claim the accident compensation as reimbursement, though for not more than the amount of this claim for compensation, and only within the limits specified in articles 1502 to 1507.

PAR. 3. The sick fund may claim reimbursement from the funeral benefit and accident pension only in so far as this is expressly authorized.

## ARTICLE 1502

Funeral benefits which the sick fund must pay to a beneficiary under article 203, are to be reimbursed from the funeral benefits which the carrier of the accident insurance has to pay such person.

## ARTICLE 1503

PARAGRAPH 1. For sick care three-eighths of that basic wage are to be reimbursed on which the pecuniary sick benefit of the beneficiary is based.

PAR. 2. In case of care in a hospital, the same rule shall be followed as for sick care. For maintenance in a hospital one-half of the basic wage shall be used; for this amount reimbursement may be claimed only from the accident pension.

## ARTICLE 1504

In the case of special apparatus, etc., which is to be granted in accordance with article 187, number 3, reimbursement is to be made up to the amount of the expenditure.

## ARTICLE 1505

For benefits other than funeral benefits, sick care, apparatus, etc. (arts. 1502 to 1504), reimbursement may be claimed only from the accident pension.

## ARTICLE 1506

PARAGRAPH 1. In so far as reimbursement for benefits of the sick funds may be claimed out of the accident pension, the claim shall be valid only up to one-half of the amount of the pension which is paid during the time for which the claims to sick benefits and pension coincide.

PAR. 2. If during this time complete maintenance in an institution has been granted to the sick person, and according to the provisions of this book reimbursement is to be made out of the accident pension, then for the duration of such maintenance a claim is valid up to the full amount of the pension. This shall be correspondingly applicable if the carrier

Code of January 1, 1913

of the accident insurance has granted complete maintenance in an institution to a sick person (art. 607).

PAR. 3. In order to determine the extent of the care in a medical institution which the carrier of the accident insurance has granted, on which a claim for reimbursement of the sick fund for its benefits is valid, maintenance in a medical institution shall be computed as equal in value to the full pension.

#### ARTICLE 1507

For the satisfaction of claims for reimbursement by the sick fund, pension amounts in arrears and such amounts for the period of entire maintenance in an institution (art. 1506, par. 2, sentence 1), may be drawn on, up to their full amount, other pension amounts only up to one-half of their amount.

#### ARTICLE 1508

PARAGRAPH 1. A claim for reimbursement (arts. 1501 to 1507) is excluded, if it has not been filed at the latest within three months after the end of the benefit payments with the carrier of the accident insurance.

PAR. 2. If, without any fault on its part, the sick fund has secured knowledge of the fact only after the expiration of this time, that the prerequisites for a claim for reimbursement are present, then it may still file the claim within one week after the day on which it secured this information.

#### ARTICLE 1509

The sick fund may enforce the determination of the accident compensation and also make use of legal means. The expiration of time limits which has occurred without any fault on its part shall not act against it; this, however, shall not apply for procedure time limits in so far as the sick fund itself enforces the procedure.

#### ARTICLE 1510

If a carrier of the accident insurance in accordance with its duty provides compensation for a period during which the beneficiary may also make claim for benefits from the sick fund either according to law or according to constitution, then the fund can deduct from its benefits for this time the accident compensation, in so far as the fund in the case mentioned in article 1501 has a claim for reimbursement on account of these benefits from the accident compensation.

#### ARTICLE 1511

The constitution of the sick fund may provide that during a sickness which is the result of an accident entitled to compensation, for the time

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Code of January 1, 1913

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during which the accident pension or care in a medical institution is provided, a pecuniary sick benefit shall only be provided in so far as it exceeds the amount of the accident pension. In such case maintenance in a medical institution shall be computed as equal in value to the full pension.

#### ARTICLE 1512

PARAGRAPH 1. The sick fund must report within three days to the carrier of the accident insurance every case of sickness which an accident entitled to compensation has brought about, as long as there is sufficient ground for the belief that the loss of earning power due to the accident will extend beyond the thirteenth week; if the patient after the expiration of three weeks after the accident has not yet recovered, then the report must be made not later than the end of the fourth week.

PAR. 2. The employee of the sick fund who conducts its business is required to make a report, if the directorate does not authorize another person to do so. The report to an accident association which is divided into sections, shall be made to the directorate of the section.

PAR. 3. The local insurance office can impose fines up to 20 marks [\$4.76] on account of failure to make a report. On appeal the superior insurance office shall decide finally.

#### ARTICLE 1513

PARAGRAPH 1. In case of sickness caused by an accident, the carrier of the accident insurance may take over the course of medical treatment. For the duration of the treatment or up to the end of the thirteenth week after the accident the insurance carrier must grant to the patient the same benefits which the sick fund would have to provide under the law or the constitution. In the place of sick care and pecuniary benefit, the accident insurance carrier may provide hospital care and house money, according to articles 184 to 186; with the approval of the patient it may also grant care as provided in article 185.

PAR. 2. The sick fund must reimburse the carrier of the accident insurance to the extent to which the patient could claim sick relief from it under the law or under the constitution and in so far as the carrier of the accident insurance was not itself required to make reimbursement. As compensation for the sick care, three-eighths of the basic wage shall be used, according to which the pecuniary sick benefit of the beneficiary was determined.

#### ARTICLE 1514

PARAGRAPH 1. The carrier of the accident insurance may transfer to the last sick fund of the injured person the fulfillment of its duties to the



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Code of January 1, 1913

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injured person and his relatives even beyond the thirteenth week after the accident until the conclusion of the medical treatment to such an extent as it shall deem proper.

PAR. 2. The accident insurance carrier shall reimburse the costs arising therefrom. As reimbursement for medical treatment (art. 558, No. 1), and for care in a medical institution, the amounts specified in article 1503 shall be used unless a higher expenditure is proved. In the navigation accident insurance, article 1106, paragraph 2, shall be used for this reimbursement.

PAR. 3. Article 1510 shall be applicable as regards the benefits provided by the sick fund itself.

#### ARTICLE 1515

PARAGRAPH 1. In controversies between a fund and the carrier of the accident insurance arising out of the transfer of its benefits (art. 1514), the local insurance office shall decide finally, if the matter does not concern a claim for reimbursement.

PAR. 2. Controversies regarding claims for reimbursement arising out of articles 1501, 1513, and 1514 shall be decided in judgment procedure.

#### ARTICLE 1516

PARAGRAPH 1. Articles 1512 to 1515 shall also apply for miners' sick funds and substitute funds. For the substitute funds, the requirement to give notice shall be regulated in the constitution.

PAR. 2. For members of miners' sick funds, the basic wage specified according to article 180 shall be applicable, while for members of substitute funds the basic wage of their sick fund shall be used.

#### ARTICLE 1517

The highest administrative authority may order that persons injured by accidents who are members of sick funds, miners' sick funds, or substitute funds, which are in a position to place the injured persons in institutes with adequate medical equipment, may be placed in another medical institution before the expiration of 13 weeks after the accident only if the directorates of the funds or of the federation of funds approve it.

### II. SICKNESS INSURANCE AND INVALIDITY AND SURVIVORS' INSURANCE

#### ARTICLE 1518

PARAGRAPH 1. If an insurance institute inaugurates a course of treatment, then for the duration thereof it shall grant to the patient the same benefits that his sick fund (art. 225) would have to provide under the law

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Code of January 1, 1913

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or the constitution. If the insurance institute places the patient in a hospital or institution for convalescents, then it can either wholly or partly refuse to pay him the invalidity or widow's pension for the duration of such course of medical treatment.

PAR. 2. The sick fund must reimburse the insurance institute in so far as the patient could claim pecuniary sick benefits from the fund according to the law or the constitution.

#### ARTICLE 1519

PARAGRAPH 1. The insurance institute which inaugurates a course of treatment may transfer the care of the patient to his last sick fund to such an extent as it deems proper.

PAR. 2. If thereby the fund has imposed upon it expenditures in excess of the extent of its legal or constitutional benefits, then the insurance institute must reimburse the costs in excess thereof.

PAR. 3. The institute must also reimburse the fund for its expenditures during the time for which the fund is no longer required to pay benefits. In such cases reimbursement for sick care and for hospital care shall be the amounts designated in article 1503 if higher expenditure is not proved.

#### ARTICLE 1520

PARAGRAPH 1. In controversies between a fund and an insurance institute arising out of a transfer of the relief (art. 1519), the local insurance office shall decide finally, if the matter does not concern a claim for reimbursement.

PAR. 2. Controversies relating to claims for reimbursement arising out of articles 1518 and 1519 shall be decided in judgment procedure.

#### ARTICLE 1521

Articles 1518 to 1520 shall also apply to miners' sick funds and substitute funds. The basic wage shall be specified according to article 1516, paragraph 2.

### III. ACCIDENT INSURANCE AND INVALIDITY AND SURVIVORS' INSURANCE

#### ARTICLE 1522

PARAGRAPH 1. The application to determine a pension for invalidity or to survivors may not be refused for the reason that the invalidity or the death was the result of an accident requiring compensation. The pension is to be paid in full until the accident pension is granted. If the latter is granted, then there shall be paid only the amount in excess of the invalidity of survivors' pension.

## Code of January 1, 1913

PAR. 2. The same rule shall apply in the case of treatment in a medical institution which the carrier of the accident insurance grants. In such case maintenance in a medical institution shall be counted as equal to the full pension.

PAR. 3. If the pension is paid for the time for which the beneficiary has a claim to an accident pension, then the insurance institute may claim as reimbursement the accident pension in so far as the pension which it has granted is not higher. For the extent of the claim for reimbursement and for the extent to which the accident pension may be drawn upon, articles 1506 and 1507 shall be correspondingly applicable.

## ARTICLE 1523

The insurance institute may enforce the determination of the accident pension and do so even if, in case of the receipt of the accident pension, the invalidity, old age, or survivors' pension has either wholly or partly ceased. Article 1509 is correspondingly applicable.

## ARTICLE 1524

PARAGRAPH 1. If on account of a case of sickness which is the result of an accident entitled to compensation, the insurance institute provides a course of medical treatment which prevents the beginning of invalidity or removes the invalidity, then the carrier of the accident insurance is required to provide reimbursement to the insurance institute for the costs of the course of treatment even if the carrier is thereby released from a burden. Article 1503 shall be correspondingly applicable for the extent of the reimbursement. If no basic wage has been specified, then the actual expenditure is to be replaced. The insurance institute may not demand reimbursement for a course of treatment during the first 13 weeks after the accident.

PAR. 2. If the insurance institute has provided the course of treatment, then in connection with the compensation claim of the beneficiary this shall be regarded as equal to a corresponding course of treatment provided by the carrier of the accident insurance. The carrier of the accident insurance shall be exempted from its obligation of providing pensions to the relatives of the beneficiary in so far as the insurance institute has paid house money for these persons. If the insurance institute has paid an invalidity or survivors' pension for the period of the course of treatment, then article 1522 shall be in so far applicable.

## ARTICLE 1525

If, on account of a case of sickness which is the result of an accident entitled to compensation, the insurance institute has granted a course of

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Code of January 1, 1913

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treatment which, although it has not prevented the beginning of invalidity or removed the same, has nevertheless released the carrier of the accident insurance from a burden, then article 1524 shall be correspondingly applicable.

#### ARTICLE 1526

Controversies in regard to claims for reimbursement (art. 1522, par. 3; art. 1524, par. 1; and art. 1525) shall be decided in judgment procedure.

### SECTION TWO—RELATIONS OF THE INSURANCE CARRIERS TO OTHER BODIES

#### ARTICLE 1527

The legal obligations of communes and poor-law unions relating to the relief of needy persons and other obligations based on law, constitution, contract, or testamentary provision (*letzwilliger Verfügung*) relating to the relief of persons insured according to this law and their survivors shall not be affected by the present law.

#### ARTICLE 1528

If a miners' association, a miners' fund, or a substitute fund, pays benefits as required because of an accident for a time during which the beneficiary had or still has a claim to the imperial accident compensation because of the accident, then the miners' association or the fund may make claim to the accident compensation as reimbursement under corresponding use of article 1501, paragraphs 2 and 3, and of articles 1502 to 1507, and 1516, paragraph 2.

#### ARTICLE 1529

If the carrier of the accident insurance as required makes compensation for the time during which the beneficiary may also claim the benefits of a miners' association, a miners' fund, or a substitute fund, then these funds may deduct the accident compensation from their benefits in so far as they may claim reimbursement in the case of article 1528.

#### ARTICLE 1530

Article 1511 shall be correspondingly applicable to miners' sick funds and substitute funds.

#### ARTICLE 1531

If the commune or poor-law union, in accordance with its legal obligation, gives relief to a needy person for the time during which he had or

## Code of January 1, 1913

still has a claim according to this law, then the commune or the poor-law union may claim reimbursement according to articles 1532 to 1537, but, however, up to only one-half of the amount of this claim.

## ARTICLE 1532

A commune or a poor-law union may claim reimbursement from the benefits of the sick fund (art. 225) only if it has granted relief on account of a sickness upon which the claim of the person relieved against the fund is based.

## ARTICLE 1533

The following shall be reimbursed:

1. Costs of burial which have been provided at the death of the insured person from the funeral benefit;
2. Relief in case of sickness of the insured person which corresponds to sick care and also in case of treatment in a hospital, according to article 1503, from the benefits corresponding thereto of the sick fund;
3. Other relief from the corresponding benefits of the sick fund. In this case one-half of the basic wage shall be used for the maintenance of the person supported in a hospital. Articles 1506 and 1507 shall be correspondingly applicable as regards the amount of the claim for reimbursement and the extent to which deductions may be made from the pecuniary sick benefit and similar benefits provided in current payments.

## ARTICLE 1534

The communes or the poor-law unions may only claim reimbursement from the benefits of the accident insurance if the relief has been granted because of the results of an accident.

## ARTICLE 1535

The following shall be reimbursed:

1. Burial costs which have been paid from the funeral benefit;
2. Relief which corresponds to the sick care which is a duty of the carrier of the accident insurance, and also treatment in a hospital, shall be reimbursed according to the actual expenditure from the corresponding benefits of the carrier;
3. Other relief shall be reimbursed from the accident pension. Articles 1506 and 1507 shall be applicable as regards the extent of the claim for reimbursement and the extent to which deductions may be made from the pension.

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Code of January 1, 1913

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## ARTICLE 1536

For reimbursement from the benefits of the invalidity and survivors' insurance, claims may be made only against pensions. Articles 1506 and 1507 shall be correspondingly applicable as regards the extent of the claim for reimbursement and extent to which deductions may be made.

## ARTICLE 1537

A commune or poor-law union may also claim reimbursement if the needy person who had a claim to an invalidity pension or old-age pension or survivors' pension dies without having made application for the pension.

## ARTICLE 1538

PARAGRAPH 1. The funds or communes and poor-law unions (arts. 1528 and 1531) entitled to reimbursement may also enforce the determination of the benefits under the imperial insurance. Article 1509 is here correspondingly applicable.

PAR. 2. The same shall apply to miners' associations and funds which reduce their benefits under the provisions of articles 1321 to 1323.

## ARTICLE 1539

The claim to reimbursement (arts. 1528 and 1531 to 1537) is excluded if it is not made effective against the carrier of the imperial insurance within six months after the cessation of the relief.

## ARTICLE 1540

Controversies relating to claims for reimbursement arising out of articles 1528 and 1531 to 1537 shall be decided in judgment procedure.

## ARTICLE 1541

The provisions of this section as regards communes and poor-law unions shall also be applicable as regards undertakers of establishments and funds which instead of such bodies grant relief to needy persons according to legal obligation.

## ARTICLE 1524

PARAGRAPH 1. In so far as under this law insured persons or their survivors may claim reimbursement for damage under other legal provisions, and such damage has occurred to them on account of sickness, accident, invalidity, or through the death of the one providing support, then such claim shall be transferred to the carriers of the insurance in so far

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Code of January 1, 1913

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as the carriers have to grant benefits under this law to those entitled to compensation. This, however, shall apply to those insured against accident and their survivors only in so far as it does not relate to a claim against the undertaker or those of equal status as specified in article 899.

PAR. 2. Article 1503 shall be correspondingly applicable in regard to the reimbursement for sick care and hospital care as well as for medical treatment and care in a medical institution.

#### ARTICLE 1543

PARAGRAPH 1. If a regular court has to pass on such claims (art. 1542), then it shall be required to follow the decision which has been issued in a procedure according to this law, as to whether and to what extent the insurance carrier is obligated.

PAR. 2. Article 901, paragraph 2, shall be correspondingly applicable as regards the suspension of the procedure before a regular court.

#### ARTICLE 1544

Articles 1531 to 1533 and 1539 to 1542 shall also be applicable to miners' sick funds and substitute funds. Basic wages shall be specified according to article 1516, paragraph 2.

### BOOK SIX—PROCEDURE

#### A. DETERMINATION OF BENEFITS

##### SECTION ONE.—DETERMINATION BY THE INSURANCE CARRIER

##### I. INAUGURATION OF THE PROCEDURE

#### ARTICLE 1545

PARAGRAPH 1. The benefits from the imperial insurance shall be determined as follows:

1. In the field of the accident insurance, on the initiative of the officials;
2. In other cases, on application.

PAR. 2. The determination shall be by expedited procedure.

#### ARTICLE 1546

PARAGRAPH 1. If the accident compensation has not been determined on the initiative of the officials, the claim shall be filed with the insurance

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Code of January 1, 1913

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carrier at the latest within two years after the accident, otherwise the claim will not be considered.

PAR. 2. For the survivors of an insured person who has sailed on a ship which went down or is not accounted for, the time limit shall be reckoned from the date on which according to article 1099 the claim to a survivor's pension has come in existence.

#### ARTICLE 1547

PARAGRAPH 1. After the expiration of the time limit the claim may still be made effective if—

1. A new result of the accident, which justifies a claim to compensation, has only later become perceptible, or if a result which occurred during the time limit has become perceptible to a considerably greater extent only after the expiration of the time limit, even though it is a gradual and regular development of the ailment.
2. If the beneficiary has been prevented from presenting the claim by circumstances beyond his control.

PAR. 2. In these cases the claim shall be presented within three months after the new result of the accident or the considerable change for the worse has become perceptible, or the hindrance to making the claim has been removed.

#### ARTICLE 1548

PARAGRAPH 1. If the injured person dies as a result of the accident, the claim to compensation of the survivors, if it has not been determined on the initiative of the officials, shall be presented to the insurance carrier at the latest within two years after the death of the insured person, otherwise the claim will not be considered.

PAR. 2. After the expiration of the time limit the claim may still be brought forward if the prerequisites mentioned in article 1547, paragraph 1, No. 1, are present and the claim has been presented within three months after the removal of the hindrance.

#### ARTICLE 1549

PARAGRAPH 1. The time limits (arts. 1546 to 1548) shall also be considered as observed if the claim has been presented in proper time to a carrier of the accident insurance which is not competent or to a local insurance office.

PAR. 2. The filing of the claim shall be reported to the competent authorities without delay; the party affected shall be notified thereof.



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Code of January 1, 1913

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## ARTICLE 1550

If cases in which voluntary benefits of the insurance carrier would seem called for come to the notice of the local insurance office, the latter shall bring them to the knowledge of the insurance carrier.

## II. SICKNESS INSURANCE

## ARTICLE 1551

PARAGRAPH 1. Applications for benefits of the sickness insurance shall be submitted to the sick fund or to the party otherwise liable.

PAR. 2. As benefits of the sickness insurance are also considered—

The benefits of sick funds, miners' sick funds, and substitute funds, according to articles 573 and 1083;

The benefits of undertakers, employers, and carriers of the other relief according to articles 577, 1084, and 1085;

The benefits of the communes and of the sick funds, according to articles 942 to 944, articles 1087, paragraph 2, article 1088, paragraph 2, and article 1089;

The benefits of the carriers of the accident insurance in case of medical treatment in the instances specified in articles 580, 946, and 1092;

The benefits paid by the sick funds, miners' sick funds, substitute funds, communes, and the undertaker to the carriers of the accident insurance, according to articles 583, 948, and 1094;

The benefits of the sick funds, miners' sick funds, and substitute funds, on the transfer of the relief by carriers of the invalidity and survivors' insurance, according to articles 1519 and 1521, in so far as it does not concern invalidity or survivors' pensions;

The benefits of the undertakers, of communes, and sick funds, if the navigation accident association has according to article 1106, or the branch institute has according to article 1091, transferred to them the relief for the first 13 weeks.

PAR. 3. Further are considered as benefits of the sickness insurance the benefits of the carriers of the accident insurance and of the carriers of the invalidity and survivors' insurance if they assume in the cases of articles 579, 600, 945, 1086, 1090, 1104, 1513, 1516, 1518, and 1521 the benefits from the parties liable specified in paragraph 2.

PAR. 4. This is applicable to the previously designated cases of articles 1083 to 1086, 1092, 1094, 1104, and 1106, only in so far as article 1770 does not provide otherwise for seamen.

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Code of January 1, 1913

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## III. ACCIDENT INSURANCE

*1. Reports of accidents*

## ARTICLE 1552

PARAGRAPH 1. The undertaker of an establishment shall report each accident in his establishment if a person employed in the establishment is killed as a result of the accident or is injured in such a manner that he dies or becomes wholly or partially disabled for more than three days.

PAR. 2. The accident shall be reported within three days after it has come to the notice of the undertaker of the establishment.

## ARTICLE 1553

PARAGRAPH 1. The report shall be made either in writing or orally both to the local police authority of the place of the accident and to the office of the insurance carrier specified in the constitution.

PAR. 2. If the accident occurs while on a journey, it may also be reported to the German local police authority in whose district the injured person first resides after the accident.

PAR. 3. If the accident occurs in a foreign country and there is no authority which is competent in Germany according to paragraph 2, it shall be reported to the local police authority of the seat of the establishment in Germany.

## ARTICLE 1554

The manager of the establishment or part of the establishment in which the accident occurred may make the reports in the place of the undertaker of the establishment. He is obliged to do so if the undertaker is absent or prevented from so doing.

## ARTICLE 1555

The Imperial Insurance Office shall specify the forms for accident reports.

## ARTICLE 1556

PARAGRAPH 1. If the accident has not been reported or was reported at too late a date, the directorate of the accident association may fine the person obliged to make the report not more than 300 marks [\$71.40].

PAR. 2. The same also is applicable in the case of article 913, paragraph 1, and the corresponding provisions for agricultural accident insurance (art. 1045). Article 913, paragraphs 2 and 3, articles 1045 and 1223, are here correspondingly applicable.

PAR. 3. On appeal the superior insurance office (decision chamber) decides finally.

#### ARTICLE 1557

The directorates of establishments administered by the Empire or a federal State shall make the report to their superior authority in the service according to the latter's detailed instructions.

#### ARTICLE 1558

The provisions relating to the reporting of accidents are correspondingly applicable to accidents in the case of an insured activity which does not belong to an insured establishment.

### *2. Investigation of accidents*

#### ARTICLE 1559

PARAGRAPH 1. If an insured person has been killed, or injured in such a manner that presumably he will have to be compensated according to this law, the local police authorities of the place of the accident shall as soon as possible investigate the accident.

PAR. 2. The local police authority shall also investigate the accident if a party liable to pay benefits according to this law makes application therefor.

PAR. 3. The beneficiary may make application to the local insurance office for an investigation of the accident. The latter may request the local police authority to comply with the request.

#### ARTICLE 1560

PARAGRAPH 1. Accidents occurring on a journey or in a foreign country shall be investigated by the local police authority to which they have been reported.

PAR. 2. On application of a person affected the superior administrative authority may, according to article 1562, transfer the investigation to another local police authority.

#### ARTICLE 1561

In the case of establishments administered by the Empire or a federal State, the superior service authority shall specify who shall investigate the accident.

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Code of January 1, 1913

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## ARTICLE 1562

The following parties may take part in the investigation or be represented in it:

The injured person or his survivors;

The carrier of the accident and the sickness insurance;

The undertaker of the establishment;

The local insurance office;

The State industrial inspectors, in the case of accidents in establishments subject to industrial inspection (art. 139b of the Industrial Code).

## ARTICLE 1563

PARAGRAPH 1. These parties affected shall be notified in due time of the date of the investigation.

PAR. 2. If the accident association is divided into sections, or if it has appointed district agents (*Vertrauensmänner*), the directorate of the section or the district agent shall be notified.

PAR. 3. Other persons who may be affected shall be called in to the investigation.

PAR. 4. The injured person or his survivors may also call in to the proceedings as assistants, adult relatives or other suitable persons who do not appear before the authorities as a business.

## ARTICLE 1564

PARAGRAPH 1. The local police authority shall determine the state of affairs. They may make any kind of inquiry with the exception of examination under oath.

PAR. 2. On application of the insurance carrier or of the beneficiary, experts shall be called in; the costs shall be paid by the applicant.

PAR. 3. If the service rooms of an authority or a vessel of the imperial navy is to be inspected, permission must be requested of the competent service authorities or of the officer in command.

## ARTICLE 1565

The investigation shall especially ascertain—

The cause, time, place, circumstances, and nature of the accident;

The name of the person killed or injured, as well as the date and place of his birth;

The nature of the injury;

The whereabouts of the injured person;

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Code of January 1, 1913

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The survivors of the person killed, and the relatives of the injured person, who could claim compensation according to this law;  
The amount of the benefits and pensions which the injured person is receiving from the imperial insurance.

#### ARTICLE 1566

The Imperial Insurance Office may decree particular provisions regarding the written record of the investigation proceedings.

#### ARTICLE 1567

PARAGRAPH 1. As soon as the investigation is terminated the local police authority shall transmit a record of the proceedings to the insurance carrier.

PAR. 2. The parties affected may demand permission to inspect the record of the proceedings and a copy of it.

PAR. 3. Copying fees may be collected for the copy.

### *3. Decisions of insurance carriers*

#### A. GENERAL PROVISIONS

#### ARTICLE 1568

The benefits of the accident insurance shall be determined—

1. By the directorate of the section, if the accident association is divided into sections: *Provided*, That the matters to be settled deal with—
  - a. the medical treatment (art. 558, par. 1), or house care (art. 599),
  - b. the pension for the duration of a presumably temporary disability,
  - c. the treatment in a medical institution,
  - d. the pension for relatives,
  - e. the funeral benefit;
2. In all other cases by the directorate of the association.

#### ARTICLE 1569

The constitution of the accident association may transfer the determination—

1. In the cases of article 1568, No. 1—
  - To the directorate of the association,
  - To a committee of the directorate of the association or section,
  - To special commissions,
  - To local representatives (district agents);

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Code of January 1, 1913

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## 2. In the cases of article 1568, No. 2—

To the directorate of the section,

To a committee of the directorate of the association or section,

To special commissions.

## ARTICLE 1570

The administrative provisions shall designate the authorities which determine the benefits, if another carrier of the accident insurance takes the place of the accident association.

## ARTICLE 1571

PARAGRAPH 1. If the insurance carrier deems the matter not sufficiently clear, it shall, with reservation of article 1572, make further investigations.

PAR. 2. Where witnesses or experts on the course of legal aid are to be examined under oath the local insurance office shall be requested to do so. If the production of evidence before the local insurance office encounters considerable difficulties, especially on account of the great distance of the residence of witnesses from the seat of the local insurance office, or if there is risk in delay, the lowest court (*Amtsgericht*) may also be requested to act.

PAR. 3. The insurance carrier may apply for the sworn examination of a witness or expert, only if it deems it necessary to have them sworn in so as to obtain a true deposition.

PAR. 4. If the application for a production of evidence has been refused by the lowest court (*Amtsgericht*) the superior State court (*Oberlandesgericht*) decides finally.

## ARTICLE 1572

PARAGRAPH 1. On application of the insurance carrier the president of the local insurance office must examine the whole matter and express an opinion thereon. He shall decide at his own discretion what investigations are necessary.

PAR. 2. Articles 1637 to 1639 are correspondingly applicable to the competence of the local insurance office.

## ARTICLE 1573

The parties affected shall be given an opportunity to participate in the examination of witnesses or experts.

## ARTICLE 1574

PARAGRAPH 1. The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) relating to the obligation to appear as witness or expert,

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Code of January 1, 1913

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to submit to examination, and the taking of an oath, are correspondingly applicable to the procedure before the judge applied to. The deposition shall not be refused because this law establishes the obligation of secrecy.

PAR. 2. The judge applied to decides if the deposition or the taking of the oath may be refused. An appeal against this decision to the next higher court is permissible within one week according to the provisions of the Code of Civil Procedure.

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#### ARTICLE 1575

The provisions of article 1574 are also applicable to the procedure before the local insurance office in so far as articles 1576 to 1579 do not prescribe otherwise.

#### ARTICLE 1576

If application has been made to the local insurance office for the examination of witnesses or experts, the same decides whether the deposition or the taking of the oath may be refused. Against its decision an appeal is permissible within one week to the superior insurance office. The superior insurance office (decision chamber) decides finally.

#### ARTICLE 1577

PARAGRAPH 1. Witnesses or experts may be fined not to exceed 300 marks [\$71.40], only if—

They do not put in an appearance;

They refuse their deposition or the taking of the oath without giving a reason, or after the reason given has been declared legally irrelevant.

PAR. 2. The local insurance office imposes the fine. Article 1576, sentences 2 and 3, is applicable to the appeal.

#### ARTICLE 1578

PARAGRAPH 1. Military persons belonging to the active service in the army or navy or to one of the colonial forces, shall on application be summoned as witnesses or experts by the military authority.

PAR. 2. If they refuse to give testimony or to take the oath, the military court shall impose the fine on application.

#### ARTICLE 1579

PARAGRAPH 1. The witnesses and experts shall receive fees as in examinations before the ordinary court in civil legal disputes.

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Code of January 1, 1913

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PAR. 2. On appeal against the determination of the fees, the superior insurance office decides finally.

#### ARTICLE 1580

PARAGRAPH 1. If the undertaker refuses to permit the insurance carrier to make an inspection, the local insurance office decides whether and in what manner the inspection shall take place.

PAR. 2. The local insurance office may itself make the inspection and use thereby the assistance of the local police authority, or apply for it to the local police authority.

PAR. 3. The appeal effects a stay.

PAR. 4. Article 1564, paragraph 3, is applicable to the inspection in the service rooms of an authority or in a vessel of the imperial navy.

PAR. 5. The highest administrative authority shall specify how far paragraphs 1 to 3 are applicable to establishments subject to mine inspection.

#### ARTICLE 1581

PARAGRAPH 1. The undertaker shall on demand report within one week to the association the earnings which serve as basis in the computation of the compensation. He shall for this purpose make current entries in regard to the earnings paid to the individual insured persons. The constitution determines particulars hereto.

PAR. 2. If the undertaker does not report the earnings, he may be fined not to exceed 300 marks [\$71.40]. If the report contains statements the incorrectness of which the undertaker has known, or must have known under the circumstances, he may be fined not to exceed 500 marks [\$119].

PAR. 3. The directorate of the association imposes the fine. On appeal the superior insurance office decides finally.

PAR. 4. These provisions are also applicable to persons designated in articles 912, 913, paragraph 1, and article 1220, and in the corresponding provisions for the agricultural and navigation accident insurance (arts. 1045 and 1222). Article 913, paragraphs 2 and 3, 1045, and 1223, are correspondingly applicable.

#### ARTICLE 1582

PARAGRAPH 1. If on the basis of a medical opinion, the compensation is refused or only a partial pension is granted, the attending physician shall first be heard, unless he has already submitted an adequate opinion.

PAR. 2. If the attending physician has a contract relation to the insurance carrier, which is not merely a temporary relation, another physician shall, on application, be called in.



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Code of January 1, 1913

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## B. DECISION

## ARTICLE 1583

PARAGRAPH 1. The office competent for the determination (arts. 1568 to 1570) shall communicate a written decision if—

1. A compensation is to be granted or refused;
2. A pension on account of change of conditions (arts. 608, 955, and 1115) is to be determined anew;
3. The matters to be settled deal with—  
medical treatment (art. 558, number 1), or house care (art. 599),  
treatment in a medical institution or pension for relatives,  
determination of the benefits after the termination of hospital  
treatment,  
funeral benefit,  
discontinuance of an accident pension on account of suspension  
of the pension,  
settlement with a beneficiary in the form of a capital sum.

PAR. 2. In the decision which fixes a settlement in the form of a capital sum, the attention of the beneficiary must be called to the fact that after the settlement he has no longer any claim to a pension, even if the consequences of the accident should become aggravated.

## ARTICLE 1584

If the injured person on account of a change of conditions claims an increase in a pension or the regranting of a pension, he must submit his claim to the insurance carrier or to the local insurance office. The local insurance office shall without delay transmit it to the insurance carrier, and notify the latter of the date of the receipt of the claim.

## ARTICLE 1585

PARAGRAPH 1. If the pension of an injured person can not yet be fixed as a permanent pension, as regards its amount, the insurance carrier is authorized, during the first two years after the accident, to determine provisionally a compensation and to change the same in accordance with a change of conditions. In the decision it shall be stated that the matter concerns only a provisional pension. The superior insurance office and the Imperial Insurance Office (or the State insurance office) have within the same time limit the right to determine a provisional compensation, in so far as they award a compensation after the insurance carrier has refused the compensation. If the injured person on account of a change in condition claims an increase in a provisional pension, article 1584 shall be applicable.

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Code of January 1, 1913

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PAR. 2. The permanent pension shall be determined at the latest on the expiration of two years after the accident. This determination does not assume a change of conditions; likewise the previous determination of the fundamental facts for the computation of the pension is not binding for it.

#### ARTICLE 1586

If, after the expiration of three months, the insurance carrier can not yet communicate a decision, it shall by an ordinary letter inform the beneficiary of the reasons. The time limit shall begin with the date on which the insurance carrier has officially learned of the accident, or in the case the death occurs later, of the death. In the case of the survivors of an insured person who has sailed on a vessel which went down or is not accounted for, the time limit shall be reckoned from the date on which according to article 1099 the claim to a pension has arisen.

#### ARTICLE 1587

PARAGRAPH 1. If, at the beginning of the liability to compensation, the amount of the compensation can not yet be decided on, the insurance carrier shall grant an advance on the compensation and notify the beneficiary by an ordinary letter of this fact.

PAR. 2. In the case of injured persons who, after the expiration of the 13 weeks after the accident, must continue to receive medical treatment, to heal the injuries, at least that compensation shall be determined, which is to be granted until the termination of the medical treatment.

#### ARTICLE 1588

If compensation has been granted, the communication of the decision shall show its amount and the method of computation. In the case of compensation to injured persons, what degree of disability has been assumed shall be specifically stated.

#### ARTICLE 1589

The grounds for the decision shall be stated and it shall be signed. The signature of the president is sufficient.

#### ARTICLE 1590

The decision must contain the statement that it shall come into force unless the beneficiary appeals in due time; the decision shall state the time limit for the appeal and refer to the rights mentioned in articles 1592, 1595, and 1596.

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Code of January 1, 1913

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## C. PROTEST

## ARTICLE 1591

PARAGRAPH 1. A protest may be made against the decision. The protest shall be submitted in writing to the insurance carrier within one month after the receipt of the decision. Article 129, paragraphs 2 and 3, is here correspondingly applicable.

PAR. 2. Article 128, paragraph 2, is correspondingly applicable in the case of seamen sojourning outside of Europe.

PAR. 3. Minors who have completed their sixteenth year of age may make a protest on their own accord.

## ARTICLE 1592

PARAGRAPH 1. The submission in due time of the protest establishes the right of the beneficiary to a personal hearing. The office which is competent for the issuing of the decision determines whether the beneficiary shall be examined before it or before the local insurance office. Articles 1637 to 1639 are correspondingly applicable to the competence of the local insurance office. As long as the beneficiary has not been examined before the competent office, he may demand that he shall be examined before the local insurance office, in the district of which he is living or employed at the time of the examination. If the beneficiary is examined before the administrative body of the association, he shall be re-compensated for his cash expenditures and his loss of time. On appeal against the determination of the costs the superior insurance office decides finally.

PAR. 2. The preliminary proceedings shall be submitted to the office which must examine the beneficiary.

## ARTICLE 1593

PARAGRAPH 1. The beneficiary who has submitted the protest shall be summoned.

PAR. 2. If he does not put in an appearance at the time fixed without giving adequate reasons for his absence, the records of the proceedings shall be returned immediately to the office competent for the decision, together with a statement concerning the same.

## ARTICLE 1594

If the person summoned puts in an appearance, his depositions shall be recorded in writing. In such case the office which is competent for the examination must secure statements of the facts necessary for the deter-

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Code of January 1, 1913

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mination and of the evidence which are as accurate and as complete as the circumstances permit.

#### ARTICLE 1595

PARAGRAPH 1. If a physician, whom the insured person of his own choice has selected for his treatment, has not already been heard by the insurance carrier, the local insurance office shall, on application of the insured person to be made at the time of his examination, consult the opinion of a physician who has not been heard until then, if according to the judgment of the local insurance office his opinion may be of importance for the decision.

PAR. 2. If the physician requested by the local insurance office to give his opinion declines to do so, the local insurance office decides whether and from which other physician such an opinion shall be secured.

#### ARTICLE 1596

PARAGRAPH 1. In any case on demand of the insured person, if he pays the costs in advance, a physician designated by him must be heard as expert. If these costs can not be determined in advance, the local insurance office may request a lump sum as security for them.

PAR. 2. If, on a final determination made on the basis of the new opinion; a pension has been granted which was refused in the decision, or the partial pension determined in the decision has been increased, the costs shall be refunded to the beneficiary as far as is appropriate. In case of dispute regarding the refund the superior insurance office on appeal decides finally.

#### ARTICLE 1597

The local insurance office decides how far the existing medical opinions shall be communicated to the new expert (arts. 1595 and 1596); on demand he shall be allowed to inspect the other preliminary proceedings.

#### ARTICLE 1598

If the examination takes place before the local insurance office, it may also express its opinion regarding the matter. It may, for this purpose, make investigations as far as the evidence is at hand or easily acquired and no considerable expenses are caused.

#### ARTICLE 1599

The proceedings relating to the protest, together with the preliminary proceedings, shall be transmitted to the officials competent for the determination without delay.

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Code of January 1, 1913

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**D. SPECIAL PROVISIONS FOR THE PROTEST AGAINST CHANGES IN PERMANENT PENSIONS****ARTICLE 1600**

If a permanent pension must be determined anew (arts. 608, 955, and 1115), on account of a change of conditions, then articles 1591 to 1599 are applicable, in so far as articles 1601 to 1605 do not provide otherwise.

**ARTICLE 1601**

The examination of the beneficiary takes place before the local insurance office. The preliminary proceedings shall be submitted to the local insurance office.

**ARTICLE 1602**

After the termination of the investigation, the matter shall be discussed in oral proceedings before the local insurance office with the participation of a representative of the employers and of a representative of the insured persons. The proceedings are not public.

**ARTICLE 1603**

The president of the local insurance office determines the order in which the representatives shall be called into the proceedings. The superior insurance office may decree general provisions in this connection.

**ARTICLE 1604**

**PARAGRAPH 1.** The examination of the beneficiary (art. 1594) and the investigations (art. 1598, sentence 2) may be combined with the oral proceedings if such action seems advisable.

**PAR. 2.** The association may have a district agent (arts. 678, No. 3, arts. 973 and 1144) or a member of another administrative body act as its representative; the beneficiary may also call into the proceedings as assistants either adult relatives or other proper persons. The representatives of the association and the assistants of the beneficiary must not consist of persons who appear before the authorities as a business.

**ARTICLE 1605**

**PARAGRAPH 1.** The local insurance office shall submit an opinion regarding the matter. The opinion shall discuss everything which according to the judgment of the local insurance office is of importance for the decision of the insurance carrier.

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Code of January 1, 1913

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PAR. 2. If the opinion is not based on the concurrence of the president of the local insurance office and the insurance representatives, the dissenting opinions shall be recorded.

#### E. FINAL DECISION

##### ARTICLE 1606

PARAGRAPH 1. After the receipt of the proceedings on the protest, or after being informed of the nonappearance of the beneficiary at the time set for the proceedings, the office competent for the determination according to articles 1568 to 1570 shall collect the proof which may still be necessary and then issue its final decision.

PAR. 2. If the protest has been submitted too late, it shall be refused as inadmissible by the office designated in paragraph 1 by a final decision.

##### ARTICLE 1607

PARAGRAPH 1. Articles 1588 and 1589 are applicable to the final decision.

PAR. 2. The beneficiary shall on application be given a copy of the opinion of the local insurance office free of charge. On application he shall also be given copies of the records of the examination of witnesses and experts and also of the medical opinions; the costs shall be paid by the applicant in advance. All copies shall be furnished only in so far as this seems permissible with proper consideration of the beneficiaries. On appeal the superior insurance office decides finally.

PAR. 3. The final decision must contain the statement that it becomes valid unless the beneficiary submits the appeal to the superior insurance office within one month after the receipt of the decision.

PAR. 4. Article 128, paragraph 2, is correspondingly applicable to seamen sojourning outside of Europe.

#### F. OTHER PROVISIONS

##### ARTICLE 1608

PARAGRAPH 1. If an insurance carrier, before the former decision relating to the amount of the compensation has become valid, makes a new decision, by which the pension on account of a change of condition has been determined anew, the protest and the legal steps against the former decision are also considered as a protest and as legal steps against the new decision.

PAR. 2. A copy of the new decision shall be transmitted to the office

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Code of January 1, 1913

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with which the older dispute is pending. This office can take up the procedure on the new decision, and on the decision of the older matter decide what compensation is to be granted for the period after the issuing of the new decision.

#### ARTICLE 1609

In so far as the highest administrative authority has made use of the powers mentioned in article 112, the administrative bodies there specified shall take the place of the local insurance office as regards the latter's duties in the procedure of protest.

#### ARTICLE 1610

If an accident compensation for such injured persons or their survivors who reside in a foreign country is to be granted, refused, or on account of change of conditions determined anew, a final decision can be given at once without any previous decision or protest.

#### ARTICLE 1611

The Imperial Insurance Office may specify the particulars in regard to the certification of decisions relating to the fixing of compensation as well as in regard to the signing and making out of decisions and final decisions.

#### ARTICLE 1612

The local insurance office notifies the insurance carrier if it learns that—

An assumption of the medical treatment by the insurance carrier before the expiration of the waiting term, or a transfer of the medical treatment by the insurance carrier to the sick fund after the expiration of the waiting term is called for;

An accident pension shall be determined anew or withdrawn on account of a change in condition;

A pension shall be suspended.

### IV. INVALIDITY AND SURVIVORS' INSURANCE

#### *1. Submission of claims*

#### ARTICLE 1613

Applications for benefits of the invalidity and survivors' insurance shall be directed to the local insurance office; documents used as evidence shall be inclosed.

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Code of January 1, 1913

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## ARTICLE 1614

Articles 1637 to 1640 are applicable to the competency of the local insurance office.

## ARTICLE 1615

PARAGRAPH 1. If payment of a widow's pension is claimed, the amount of which has been determined, then the local insurance office of the place in which the widow at the time of the application for payment resides or is employed is the competent office; articles 1639 and 1640 are here correspondingly applicable.

PAR. 2. If the prerequisite for the receipt of an orphan's settlement is only complied with after the death of the insured person, the competence is regulated by the place of residence of the orphans.

## ARTICLE 1616

The highest administrative authority may decree that the claims may also be submitted to other authorities with the effect of articles 1256 and 1263. These authorities shall transmit the claims to the competent local insurance office without delay.

*2. Preparations of the case by the local insurance office*

## ARTICLE 1617

PARAGRAPH 1. The president of the local insurance office ascertains according to his own judgment what is necessary for the elucidation of the facts; article 1652 is here correspondingly applicable.

PAR. 2. The inquiries shall cover all questions which are of importance for the decision of the insurance carrier, especially the following;

The insurance obligation or to the right to insure voluntarily;

The invalidity and the date of its beginning;

The age of the orphans;

The indigence, where a widow's pension or, in the cases of articles 1260 to 1262, an orphan's pension is concerned.

PAR. 3. On application of the beneficiary the opinion of a physician named by him shall be asked if the opinion, in the judgment of the local insurance office, may be of importance for the decision; the beneficiary shall pay the costs in advance. Otherwise articles 1595, paragraph 2, 1596, and 1597 are correspondingly applicable.

## ARTICLE 1618

After the termination of the inquiries by the president the matter shall, in so far as article 1624 does not provide otherwise, be discussed before



the local insurance office in oral proceedings, with the attendance of a representative of the employers and a representative of the insured persons.

#### ARTICLE 1619

The provisions of articles 1652 and 1655 are correspondingly applicable to the preparation of the oral proceedings. In particular, the president can order before the oral proceedings, the examination of the applicant and the expression of an opinion as to his health by a physician, and also require the personal appearance of the applicant at the oral proceedings.

#### ARTICLE 1620

Article 1603 is correspondingly applicable to the order in which the insurance representatives shall be called into the proceedings.

#### ARTICLE 1621

Articles 1641 to 1649 are correspondingly applicable in regard to the disqualification and the refusal to serve both of the president of the local insurance office and of the insurance representatives.

#### ARTICLE 1622

PARAGRAPH 1. The oral proceedings are not public.

PAR. 2. Otherwise articles 1662 to 1665, 1667, 1669, and 1672 are correspondingly applicable to the oral proceedings, but article 1654 shall not be applicable.

#### ARTICLE 1623

PARAGRAPH 1. The local insurance office shall submit an expression of opinion in the matter; the expression of opinion shall include everything which, according to the judgment of the local insurance office, is of importance for the decision of the insurance carrier.

PAR. 2. If on account of a crime or intentional misdemeanor (art. 1254) or other violation (arts. 1272 and 1306) the claim may be wholly or partially disallowed or withdrawn, then an opinion shall also be expressed as to the point regarding the extent to which use shall be made of this right.

PAR. 3. Where the opinion is not based on the concurrence of the president of the local insurance office and the insurance representatives the dissenting opinions, together with a statement of the reasons, shall be recorded.

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Code of January 1, 1913

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## ARTICLE 1624

PARAGRAPH 1. An oral proceeding does not take place if the matters to be settled deal with—

Old age pensions;

Orphans' pension;

Widows' money (*Witwengeld*) and orphans' settlement (*Waisenaussteuer*);

Settlement in the form of a capital sum (arts. 1316, 1317, and 1476);

Cases in which the insurance carrier and the beneficiary are in accord.

PAR. 2. The imperial decree (art. 35, par. 2) may specify other cases in which no oral proceedings take place.

PAR. 3. If an oral proceeding does not take place, then the president of the local insurance office shall submit the expression of opinion.

## ARTICLE 1625

The president of the local insurance office transmits the proceedings and the opinion to the insurance carrier (art. 1630).

## ARTICLE 1626

PARAGRAPH 1. Articles 1617 to 1625 are correspondingly applicable if an invalidity, survivors', or supplementary pension is to be withdrawn or if a pension is to be discontinued.

PAR. 2. Articles 1637 to 1640 are correspondingly applicable to the competence of the local insurance office.

PAR. 3. An oral proceeding does not take place if matter to be dealt with concerns the suspension of a pension (arts. 1311 to 1315, and 1318).

## ARTICLE 1627

The highest administrative authority can specify the procedure for the preparation of the matter and the expression of an opinion by the local insurance office, in so far as it is not regulated by imperial decree (art. 35, par. 2).

## ARTICLE 1628

PARAGRAPH 1. Articles 1617 to 1627 are correspondingly applicable if the preparation and expression of an opinion on the matter is transferred to administrative bodies of miners' associations, miners' funds, or special institutes for establishments of the Empire or of the federal States.

PAR. 2. Article 1571, paragraphs 2 to 4, and articles 1573 to 1579 are correspondingly applicable if witnesses or experts are to be examined under oath.

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Code of January 1, 1913

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## ARTICLE 1629

The local insurance office shall notify the insurance carrier if it learns that—

An insured person or a widow can be protected from invalidity by a course of treatment;

The beneficiary of an invalidity, widows', widowers', or supplementary pension can have his earnings power restored by a course of treatment;

The invalidity, widows', widowers', or supplementary pension should be withdrawn;

A pension should be suspended.

*3. Decision of the insurance carriers*

## ARTICLE 1630

PARAGRAPH 1. The benefits of the invalidity and survivors' insurance shall be determined by the directorate of the insurance institute.

PAR. 2. The insurance institute for the district of the local insurance office through which the claim is to be filed is the competent one.

## ARTICLE 1631

PARAGRAPH 1. A written decision shall be communicated if the claim filed has been recognized or disallowed. It shall contain the reasons therefor and be signed. The signature of the president is sufficient. Article 1611 is applicable to the certification of decisions relating to the determination of benefits and the making out of the decisions.

PAR. 2. If the claim is disallowed the beneficiary shall, on application, receive a copy of the opinion of the local insurance office free of charge. He shall, on application, also receive copies of the records of the examination of witnesses and experts and also of the medical opinions; the costs shall be paid by the applicant in advance. All copies shall be furnished only in so far as this is permissible with due consideration of the beneficiary. On appeal the superior insurance office decides finally.

PAR. 3. If a pension is granted, the decision shall state its amount, the time of its beginning, and the method of its computation.

PAR. 4. The decision must contain the statement that it becomes valid unless the beneficiary, within one month after the receipt of the decision, files an appeal with the superior insurance office. Article 128, paragraph 2, is applicable to seamen sojourning outside of Europe.

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Code of January 1, 1913

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## ARTICLE 1632

If the insurance carrier is not willing to comply with the opinion expressed by the president of the local insurance office regarding the granting of a pension, then the matter shall be returned to the local insurance office for discussion and expression of opinion (art. 1623) if the matter to be settled deals with the insurance obligation, the right to insure voluntarily, or the invalidity.

## ARTICLE 1633

Articles 1630 to 1632 are correspondingly applicable if a pension is to be withdrawn or stopped.

## ARTICLE 1634

PARAGRAPH 1. On application of the local insurance office the insurance carrier may charge to a party affected by the decision any costs which he has caused by malice, obstruction, or deceit.

PAR. 2. These costs shall accrue to the treasury of the insurance carrier.

*4. Renewal of applications*

## ARTICLE 1635

PARAGRAPH 1. If an application for an invalidity pension or for the payment of the widow's pension has been definitely refused, because permanent invalidity could not be proved, or if an invalidity or widow's pension has been withdrawn with legal effect, because the invalidity existed no longer, then the application may only be repeated one year after the delivery of the decision, and sooner only if it is authentically certified that in the meantime circumstances have arisen which furnish proof of the invalidity.

PAR. 2. If the certification is not produced, then the local insurance office shall refuse the application as being repeated prematurely. The decision is not contestable.

## SECTION TWO.—DETERMINATION BY JUDGMENT PROCEDURE

## I. PROCEDURE BEFORE THE LOCAL INSURANCE OFFICE

*1. Competence of the local insurance office*

## ARTICLE 1636

In disputes as to the benefits of the sickness insurance the local insurance office (judgment committee), with reservation of article 1661, on application decides in the first instance.

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Code of January 1, 1913

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## ARTICLE 1637

That local insurance office is the competent one in whose district at the time of the application the insured person is residing or is employed.

## ARTICLE 1638

PARAGRAPH 1. If the insured person has no place of residence or employment in Germany, or if he is dead, or his whereabouts are unknown, his last place of residence or employment in Germany shall be decisive.

PAR. 2. If there is no such place, then the seat of the establishment shall be decisive in which the insured person is employed or was last employed.

## ARTICLE 1639

If, according to articles 1637 and 1638, several local insurance offices are competent, preference shall be given to the one which was first approached.

## ARTICLE 1640

PARAGRAPH 1. If the local insurance office believes that another office is competent, it shall transmit the matter to the latter.

PAR. 2. If the latter office also believes it is not competent, then the decision rests with the president of that superior insurance office to which both offices are subordinate; or if there is no such office, with the Imperial Insurance Office (or the State insurance office).

PAR. 3. The decision is final and binding for the lower instances.

*2. Disqualification and rejection of members of the judgment committee.*

## ARTICLE 1641

The following are disqualified from participation in the judgment committee:

1. Whoever is himself one of the parties to the matter;
2. Whoever is liable for reimbursement to one of the parties;
3. Whoever is or has been married to one of the parties;
4. Whoever is related in direct line or related by marriage, or related in collateral line in the second or third degree, or related by marriage in the third degree to one of the parties;
5. Whoever was summoned in the matter as an authorized agent or assistant of one of the parties, or is entitled to act as his legal representative, or has been so entitled;
6. Whoever has been examined in the matter as a witness or expert;

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Code of January 1, 1913

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7. Whoever has participated in the decision as to the benefit as a member of an administrative body of the insurance carrier.

**ARTICLE 1642**

If the president of the local insurance office is at the same time president of an administrative body of the insurance carrier, then he shall also be excluded from participation in the judgment committee in such matters of this insurance carrier in which he was not active formerly.

**ARTICLE 1643**

**PARAGRAPH 1.** Members of the judgment committee may be rejected for reasons which justify their disqualification as well as on account of prejudice. The rejection on account of prejudice is justified if facts are submitted which may warrant distrust as to the members' impartiality.

**PAR. 2.** No member may be rejected as prejudiced if the party knew the reason of disqualification before, but brings it forward only after the party has entered into a proceeding before the judgment committee.

**ARTICLE 1644**

The president of the local insurance office shall not be excluded from participation in the judgment committee because he was officially active in the matter in the preliminary proceedings; he shall also not be rejected as prejudiced for this reason.

**ARTICLE 1645**

**PARAGRAPH 1.** The grounds for the rejection must be reasonable.

**PAR. 2.** If the party, after having entered into a proceeding, declines to accept a member of the judgment committee as being prejudiced, he must show that the grounds for the rejection have arisen only at a later time or have only later been ascertained by him.

**ARTICLE 1646**

If the acceptance of a representative of the insurance is declined, the president decides. If the acceptance of the president is declined, the superior insurance office decides finally. No decision is necessary if the person whose acceptance was declined considers the application for rejection as justified.

**ARTICLE 1647**

**PARAGRAPH 1.** The decision which considers the application as justified is final.

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Code of January 1, 1913

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PAR. 2. The decision of the president which rejects the application may not be contested by itself alone, but only together with the decision on the main matter.

#### ARTICLE 1648

Article 1646 is also applicable if a member of the judgment committee himself announces a fact which could justify the declination to accept him, or if doubts arise on the question whether he is disqualified by a legal reason.

#### ARTICLE 1649

If after the disqualification of members or declination to accept members an insurance authority becomes incapable of making a decision, then the next higher judgment authority shall determine which other authority of equal rank shall decide the matter.

### *3. Procedure up to the oral proceedings*

#### ARTICLE 1650

PARAGRAPH 1. The application described in article 1636 shall be made at the competent local insurance office (arts. 1637 to 1640).

PAR. 2. Article 129, paragraphs 2 and 3, is correspondingly applicable to the application at other authorities.

PAR. 3. Minors who have completed the sixteenth year of their age can make for themselves application independently and prosecute it independently.

#### ARTICLE 1651

The application for a decision of the local insurance office effects a stay, if the matter in question deals with a settlement in the form of a capital sum (arts. 217 and 218). The settlement can only be confirmed or annulled by judgment procedure.

#### ARTICLE 1652

PARAGRAPH 1. The president prepares the matter and may collect evidence before the oral proceedings begin.

PAR. 2. According to his own judgment he can make personal inspections, examine witnesses and experts, also under oath procure opinions from physicians and all kinds of official information, and may also call in other insurance carriers.

PAR. 3. Witnesses and experts shall only be sworn in if the president deems this necessary in order to obtain a true deposition. Article 1571, paragraphs 2 to 4; articles 1573, 1574, paragraph 1; articles 1575, 1577 to

## Code of January 1, 1913

1579, and 1580, paragraphs 2 to 5, are here correspondingly applicable; the president decides whether the deposition or taking of the oath may be refused. Within one week an appeal to the superior insurance office against his decision is permissible. The superior insurance office (decision chamber) decides finally.

## ARTICLE 1653

PARAGRAPH 1. The contents and on demand a copy of the proceedings concerning the evidence shall be communicated to the parties affected.

PAR. 2. The president decides in how far medical certificates and opinions shall be communicated. The judgment committee may make the communication later on.

## ARTICLE 1654

PARAGRAPH 1. If the claim depends on a status of family or hereditary rights, the president may direct the parties affected to have the status determined by the regular courts.

PAR. 2. At the same time he specifies up to which date the suit must be filed; on application the time limit may be extended.

## ARTICLE 1655

PARAGRAPH 1. The president specifies the time of the proceedings and notifies the parties thereof.

PAR. 2. The president may summon witnesses and experts to the oral proceedings and give other orders, especially as to the personal appearance of the applicant.

## ARTICLE 1656

Article 1603 is correspondingly applicable to the order in which the insurance representatives shall be called in to the proceedings.

## ARTICLE 1657

The president may give a preliminary decision in all matters without oral proceedings.

## ARTICLE 1658

PARAGRAPH 1. Against the preliminary decision, that legal remedy may be interposed which would be admissible against the decision, or application may be made within the same time limit for oral proceedings. The preliminary decision shall call attention thereto with a statement of the time limit.

PAR. 2. Minors, who have completed their sixteenth year of age, can make application for oral proceedings independently.



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Code of January 1, 1913

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PAR. 3. If the application for oral proceedings was made too late, it shall be refused as inadmissible.

#### ARTICLE 1659

PARAGRAPH 1. If use has been made of both legal remedies, then the oral proceedings shall take place.

PAR. 2. In regard to the legal remedies and the resumption of the proceedings, the preliminary decision is considered equal to a decision if no application has been made for oral proceedings.

#### *4. Oral proceedings*

#### ARTICLE 1660

PARAGRAPH 1. The proceedings before the judgment committee shall be conducted orally and publicly.

PAR. 2. Publicity may be forbidden for reasons of public welfare and morality; the decision shall be made public.

#### ARTICLE 1661

In public oral proceedings on benefits of the sickness insurance the president alone decides if the matters to be settled deal with—

1. Solely the computation of the determination of the duration and amount of the sick benefit;
2. The granting of hospital care in the place of the sick benefit;
3. The funeral benefit;
4. Benefits the total amount of which is less than 50 marks [\$11.90].

#### ARTICLE 1662

The applicant may either appear himself or may have himself represented; the insurance carrier may also have itself represented. The parties and the representatives of the parties who appear shall be given a hearing.

#### ARTICLE 1663

PARAGRAPH 1. The local insurance office, may exclude authorized representatives and assistants who make a business of appearing before authorities.

PAR. 2. This is not applicable to lawyers and such persons who are permitted to appear before courts (art. 157 of the Civil Code), nor to such persons who are admitted as legal representatives before local and superior insurance offices and do so as a business.

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Code of January 1, 1913

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PAR. 3. The superior insurance office decides on the admission, the highest administrative authority on appeal.

PAR. 4. The admission may be refused only if an important reason exists; it may not be refused for reasons based on the religious or political activity of the applicant.

#### ARTICLE 1664

PARAGRAPH 1. The provisions of the law on the constitution of the courts (*Gerichtsverfassungsgesetz*) relating to the maintenance of order in the session (arts. 176 to 182, and 184) are correspondingly applicable.

PAR. 2. The superior insurance office decides finally on appeals against penalties for acts of disorder.

#### ARTICLE 1665

PARAGRAPH 1. If the judgment committee does not deem the matter sufficiently elucidated, it shall decide on the necessary proof. The president may be charged with the execution of the decision.

PAR. 2. Articles 1652, paragraphs 2 and 3, and 1653, shall be correspondingly applicable for the production of evidence; and article 1654 for the subsequent order to have a legal status determined by the ordinary law procedure.

#### ARTICLE 1666

The dispute is considered as settled if the parties come to an agreement as to the disputed claim and costs which may have arisen.

#### ARTICLE 1667

PARAGRAPH 1. The judgment committee decides according to a majority of votes.

PAR. 2. If no majority can be obtained in the voting on the amount of benefits, then the votes cast for the larger amount shall be added to those cast for the next smaller one until a majority results.

#### ARTICLE 1668

PARAGRAPH 1. If the judgment committee holds that the claim is established, it shall at the same time determine the amount and the time when the benefit begins.

PAR. 2. If, as an exception, the claim has been allowed because of the reasons stated, then a provisional benefit shall be decreed and its amount determined. The determination of the provisional benefit is final; the provisional payments shall be charged against the claim.

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Code of January 1, 1913

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## ARTICLE 1669

PARAGRAPH 1. If by order of the president the applicant has appeared at the oral proceedings, then, on demand, he shall be reimbursed for his cash expenditures and loss of time; they may be refunded if he has appeared without any order and the judgment committee deems the appearance necessary.

PAR. 2. On appeal against the decree which determines or disallows the compensation, the superior insurance office decides finally.

PAR. 3. If the applicant has appeared without an order, the reimbursement is considered as disallowed unless the judgment committee explicitly decides that the appearance was necessary. No appeal takes place in this case.

## ARTICLE 1670

PARAGRAPH 1. At the proceedings shall be examined on the initiative of the officials whether and to what extent the party who lost the case shall refund the costs of his opponent.

PAR. 2. The amount of these costs shall be determined in the decision.

PAR. 3. On application of the party they shall be collected through the instrumentality of the local insurance office in like manner as communal taxes.

## ARTICLE 1671

PARAGRAPH 1. The decision of the judgment committee shall be made public even if publicity in the proceedings was forbidden.

PAR. 2. It shall contain the reason, be signed by the president, copies made out, and delivered to the parties.

## ARTICLE 1672

A written record shall be made of the oral proceedings.

## ARTICLE 1673

PARAGRAPH 1. Errors in writing or in the computation and similar evident mistakes which exist in the decision shall always on application or on the initiative of the officials be corrected.

PAR. 2. The president shall decide without oral proceedings whether corrections shall be made.

PAR. 3. If he makes a correction, the authorization shall be noted on the original of the decision and on the copies. The party affected may appeal against the decree to the superior insurance office; the superior insurance office decides finally.

PAR. 4. The decree which refuses a correction may not be contested.

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Code of January 1, 1913

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## ARTICLE 1674

PARAGRAPH 1. If the decision has wholly or partly omitted a principal or secondary claim submitted by a party, or the matter of costs, on application it shall be supplemented later.

PAR. 2. Such application may be decided without oral proceedings, if the matters to be settled deal with a secondary claim or a matter of costs.

PAR. 3. The supplementary decision shall be noted on the original of the decision and the copies.

## II. PROCEDURE BEFORE THE SUPERIOR INSURANCE OFFICE

## ARTICLE 1675

Against final decisions of the carriers of the accident insurance, also against decisions of carriers of the invalidity and survivors' insurance, and likewise against judgments of the local insurance office, the legal remedy of the appeal to the superior insurance office (judgment chamber) is permissible.

## ARTICLE 1676

On the appeal in matters of the sickness insurance, the superior insurance office decides for the district of that local insurance office which has issued the contested decision or the president of which has issued the contested preliminary decision.

## ARTICLE 1677

PARAGRAPH 1. On the appeal in matters of the accident insurance that superior insurance office decides in whose district the insured person at the time of the filing of the appeal was residing or was employed. Articles 1638 to 1640 are here correspondingly applicable.

PAR. 2. In matters of the navigation accident insurance the home port of the vessel, or the seat of the establishment in which the accident occurred, regulates the competence of the superior insurance office. If the home port is not situated in the district of a superior insurance office, the appeal shall be filed at the superior insurance office which is competent for the seat of the navigation accident association.

## ARTICLE 1678

PARAGRAPH 1. On the appeal in matters of the invalidity and survivors' insurance, the superior insurance office for the district of that local insurance office, decides which according to articles 1617 to 1627, has participated in the preparation of the matter.

PAR. 2. If the preparation and expression of an opinion on the matter has been transferred to administrative bodies of miners' associations,

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Code of January 1, 1913

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miners' funds, or to special institutes for establishments of the Empire or of federal States, then that superior insurance office is the competent one in the district of which the seat of these administrative bodies is located.

#### ARTICLE 1679

PARAGRAPH 1. The provisions for the judicial procedure before the local insurance office are correspondingly applicable to the procedure in the case of appeals, in so far as articles 1680 to 1693 do not provide otherwise.

PAR. 2. Article 1581 is correspondingly applicable to the obligation of reporting the earnings.

#### ARTICLE 1680

In matters of sickness insurance the appeal shall be filed with the local insurance office. The local insurance office shall, not later than two weeks afterward, submit it, together with the preliminary proceedings, to the superior insurance office.

#### ARTICLE 1681

If the insured person or his survivors make application to hear the opinion of a specified physician, the superior insurance office, if it desires to grant the application, may make the hearing dependent on the condition that the applicant shall advance the costs and finally defray them unless the superior insurance office decides otherwise.

#### ARTICLE 1682

The appeal effects a stay if the matter to be settled deals with—

The resumption of the course of treatment according to articles 603, 604, 952, and 1112;

The settlement in the form of a capital sum (arts. 616, 617, 955, 1117, 1316, 1317, and 1476).

#### ARTICLE 1683

PARAGRAPH 1. If a final decision of the insurance carrier, which on account of a change in conditions reduces or withdraws an accident compensation, has been contested, then the president on application may decree that the execution of the decision shall be wholly or partly suspended in the meantime.

PAR. 2. The decree may at any time be revoked. It may not be contested by itself alone, but only together with the decision in the principal matter.

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Code of January 1, 1913

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## ARTICLE 1684

PARAGRAPH 1. The associates shall be called in to the proceedings of the judgment chamber in an order of succession determined in advance. The highest administrative authority determines the particulars. Associates who have been elected to the decision chamber shall not be called in to the proceedings of the judgment chamber as frequently as others.

PAR. 2. If for special reasons the president desires to depart from the order of succession, he shall state these reasons in the documents.

## ARTICLE 1685

PARAGRAPH 1. In matters of the accident insurance as far as possible those associates shall be summoned who are persons belonging to such establishments which in technical and economic features closely resemble the establishment in which the accident occurred, regardless of the regular order.

PAR. 2. This must be done where the matter to be settled deals with accidents in agriculture or mining establishments, in so far as persons belonging to such establishments are available as associates at the superior insurance office. Exceptions are permissible for special reasons which shall be stated in the documents.

## ARTICLE 1686

PARAGRAPH 1. The superior insurance office (decision chamber) shall elect for four-year terms at the end of the last year the physicians whom it shall summon as experts, according to need; they shall be elected from its district and, as a rule, after a hearing of the competent medical association. Such physicians, who stand in contract relations to carriers of the accident insurance, or whose services are regularly used by them for the expression of opinions, shall not be summoned as experts in matters of the accident insurance. The same is correspondingly applicable to the invalidity and survivors' insurance. At least half their number shall reside at the seat of the superior insurance office.

PAR. 2. The names of the persons elected shall be published.

PAR. 3. The experts shall, before they express their opinion, be permitted to inspect the documents.

PAR. 4. The highest administrative authority shall regulate the execution of this provision.

## ARTICLE 1687

Carriers of the accident insurance not effected by the dispute may by a judgment be required to pay compensation, if they have been summoned to the proceedings.

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Code of January 1, 1913

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## ARTICLE 1688

If an accident pension is reduced, the superior insurance office shall determine finally the extent to which each later pension payment shall be reduced to balance the excess already paid.

## ARTICLE 1689

A decision or final decision which determines a settlement by a capital sum, according to articles 616, 617, 955, 1117, 1316, 1317, and 1476, can only be confirmed or abrogated in a judgment procedure.

## ARTICLE 1690

PARAGRAPH 1. If the judgment chamber has abrogated the contested decision or final decision on the contested judgment on account of an essential defect in the procedure, it may reassign the matter to the lower authority or to the insurance carrier.

PAR. 2. In connection herewith it may decree the granting of a provisional benefit.

## ARTICLE 1691

The provisions of article 1661 relating to the decision by the president alone are not applicable to the procedure in appeals.

## ARTICLE 1692

PARAGRAPH 1. If it has been determined that the judgment may not be contested by a review or final appeal (arts. 1695, 1696, and 1700), then the president of the judgment chamber shall, with a reference to the legal provisions, state at the close of the judgment that no further legal remedy is permissible against it.

PAR. 2. If a preliminary decision has been issued (art. 1679 in connection with art. 1657), then it shall be stated that only an application for oral proceedings before the judgment chamber is permissible; the time limit for it is to be designated.

## ARTICLE 1693

PARAGRAPH 1. If, in a case in which a review or final appeal is forbidden (arts. 1695, 1696, and 1700), the superior insurance office desires to dissent from a fundamental decision of the Imperial Insurance Office, officially published, or if the matter to be settled in such case deals with an interpretation of legal provisions of fundamental importance which has not yet been determined, it shall transmit the matter with a justification of its legal interpretation to the Imperial Insurance Office.

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Code of January 1, 1913

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PAR. 2. If the superior insurance office desires to dissent in such a case from an officially published decision of the State insurance office to which it is subordinate, it shall then transmit the matter to the State office.

PAR. 3. If the superior insurance office desires to dissent in the same matter from a fundamental decision of the Imperial Insurance Office and of a State insurance office officially published, then the Imperial Insurance Office is competent for the decision.

PAR. 4. The Imperial Insurance Office (or the State insurance office) decides in these cases in place of the superior insurance office. The parties affected shall be notified that the matter has been so referred.

### III. PROCEDURE BEFORE THE IMPERIAL INSURANCE OFFICE (OR THE STATE INSURANCE OFFICE)

#### *1. Sickness, and invalidity and survivors' insurance*

##### ARTICLE 1694

Against the judgments of the judgment chambers a review is permissible in matters of the sickness insurance, as also of the invalidity and survivors' insurance.

##### ARTICLE 1695

In the case of claims to benefits of the sickness insurance, the review is excluded if the matter to be settled deals with—

1. The amount of the pecuniary sick benefit, the house money, or the funeral benefit;
2. Cases for relief in which the sick person was not disabled or was disabled less than eight weeks;
3. Maternity benefits;
4. Family benefits;
5. Settlement by capital sums;
6. Costs of procedure.

##### ARTICLE 1696

In the case of claims to benefits of the invalidity and survivors' insurance, the review is excluded if the matter to be settled deals with—

1. The amount, beginning, and termination of the pension;
2. Settlement in the form of a capital sum;
3. Widows' money;
4. Orphans' settlements;
5. Costs of procedure.



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Code of January 1, 1913

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## ARTICLE 1697

The review may only be based on the fact that—

1. The contested judgment is based on the nonemployment or incorrect employment of the existing law or on an offense against the clear content of the acts.
2. The procedure had essential defects.

## ARTICLE 1698

PARAGRAPH 1. The provisions for the judgment procedure before the local insurance office are applicable to the procedure of review in so far as articles 1707 to 1721 do not provide otherwise.

PAR. 2. The provisions of articles 1656 to 1659 and 1661 are not applicable.

*2. Accident insurance*

## ARTICLE 1699

Against the judgments of the judgment chambers a final appeal is permissible in matters relating to the accident insurance.

## ARTICLE 1700

A final appeal is not permitted if the matter to be settled deals with—

1. The medical treatment (art. 558, No. 1) or house care (art. 599);
2. The pension for a disability which at the time of that decision of the court from which the final appeal is taken has been passed over without contest or passed over after a legal determination has been made;
3. Parts of pensions which are to be granted for restricted periods which have already expired;
4. Treatment in a medical institution;
5. Pensions to relatives;
6. Funeral benefits;
7. Provisional pensions (art. 1585, par. 1);
8. Redetermination of a permanent pension on account of change of condition;
9. Settlement in the form of a capital sum;
10. Costs of procedure.

## ARTICLE 1701

PARAGRAPH 1. The provisions relating to the judgment procedure before the local insurance office, as well as articles 1679, paragraph 2, 1681, and

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Code of January 1, 1913

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1682, are correspondingly applicable to the procedure of final appeal in so far as articles 1702 to 1721 do not provide otherwise.

PAR. 2. Articles 1656 to 1659 are here not applicable.

#### ARTICLE 1702

The employers and insured persons elected from the corresponding field of the accident insurance shall be called in to the proceedings.

#### ARTICLE 1703

A carrier of the accident insurance which is not affected by the dispute may be summoned to the final appeal procedure. It can be required by a judgment to pay compensation even if a claim against it has already been disallowed with legal effect.

#### ARTICLE 1704

PARAGRAPH 1. If a senate of the Imperial Insurance Office has denied the obligation of an insurance carrier to provide compensation, because another insurance carrier is liable, then the claim against the other insurance carrier may not be disallowed because the insurance carrier which was exempted in the former procedure is liable to compensation.

PAR. 2. If in a previous procedure a State insurance office denied the obligation to compensation, and if another State insurance office intends to disallow the claim because it believes that the insurance carrier exempted in the previous procedure is liable to compensation, then the matter shall be transmitted to the Imperial Insurance Office for a decision.

#### ARTICLE 1705

PARAGRAPH 1. If the obligation to compensation of an insurance carrier has been determined finally, then on application the Imperial Insurance Office (judgment senate) may discontinue a procedure which, on account of the same accident, is pending against another insurance carrier.

PAR. 2. The State insurance office shall take the place of the Imperial Insurance Office if the districts of the insurance carriers affected do not extend beyond the territory of the federal State.

#### ARTICLE 1706

PARAGRAPH 1. If claims to compensation against several insurance carriers on account of the same accident have been allowed finally, then the Imperial Insurance Office (judgment senate) shall abrogate the determination which has been incorrectly made. The payments made shall

Code of January 1, 1913

be refunded from the compensation. In case of dispute the claim for reimbursement shall be decided by judgment procedure.

PAR. 2. In place of the Imperial Insurance Office the State insurance office shall decide if the districts of the insurance carriers affected do not extend beyond the territory of the federal State.

### 3. General provisions

#### ARTICLE 1707

If an otherwise permissible remedy at law of a party refers also to claims for which the remedy at law is not permitted, then a decision on the case shall be made only if the requirements of the applications which are permissible have been met either wholly or partly.

#### ARTICLE 1708

PARAGRAPH 1. The Imperial Insurance Office decides as to the remedy at law.

PAR. 2. In the place of the Imperial Insurance Office the State insurance office shall decide if the district of the insurance carrier affected does not extend beyond the territory of the federal State. But in so far as an insurance carrier is affected for which the Imperial Insurance Office or another State insurance office is competent, the Imperial Insurance Office shall decide.

PAR. 3. The decisions shall be made by the judgment senate.

#### ARTICLE 1709

PARAGRAPH 1. The remedy at law shall be stated in writing, and it shall state the reasons therefor.

PAR. 2. The senate may also alter the judgment contested for reasons other than those stated in the remedy at law.

#### ARTICLE 1710

With the exception of the cases mentioned in article 1682, the remedies at law effect a stay if they are submitted by the insurance carrier in relation to amounts which must be paid subsequently for the period previous to the issuing of the contested judgment.

#### ARTICLE 1711

If the contested judgment has been designated incorrectly as a final one (art. 1692), the remedy at law shall be permissible; it shall be submitted within one year after its delivery.

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Code of January 1, 1913

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## ARTICLE 1712

If a member of the judgment senate has been disqualified for a reason which justifies his exclusion, or because prejudice is apprehended, then the judgment senate shall decide on the application for disqualification. The person disqualified shall not participate in the decision. In the case of a tie vote the application shall be considered as disallowed.

## ARTICLE 1713

PARAGRAPH 1. If the president of the senate is of the same opinion as the reporter that the remedy at law is not permissible, or has been submitted at too late a date, he may disallow it without oral proceedings. If the remedy at law has been disallowed as belated, the applicant may within one week after delivery of the decree appeal to the judgment senate; the decree must refer to it.

PAR. 2. Otherwise the decision must be made in a public session after an oral proceeding.

## ARTICLE 1714

The Imperial Insurance Office (or the State insurance office) shall decide in regard to the admission of persons to act as legal representatives before the senates as a business (art. 1663, par. 3). Article 1663, paragraph 4, is here correspondingly applicable.

## ARTICLE 1715

PARAGRAPH 1. If the judgment contested is abrogated then the senate may either itself decide on the matter, or return it for decision to one of the lower authorities, or to the insurance carrier. In such case it may order the granting of a provisional benefit.

PAR. 2. The office to which the matter is transferred is restricted to the legal grounds of appeal on which the abrogation of the contested judgment is based.

## ARTICLE 1716

PARAGRAPH 1. The Imperial Insurance Office and the State insurance office shall publish those of their decisions which are of fundamental importance.

PAR. 2. For the Imperial Insurance Office the imperial chancellor shall specify the manner of publication; the highest administrative authority shall do so for the State insurance office.

PAR. 3. These shall also specify the previous publications to which articles 1693, 1717, and 1718 shall be applicable.

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Code of January 1, 1913

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## ARTICLE 1717

PARAGRAPH 1. If in a fundamental legal question a senate of the Imperial Insurance Office desires to dissent from the decision of another senate, it shall refer the matter with the reasons for its legal interpretation to the great senate (art. 101). The same is applicable if a senate desires to dissent from the decision of the great senate itself.

PAR. 2. The referring senate shall designate one of its members who, in the decision of the matter, shall as an associate in the great senate, take the place of another member of the same group of this senate. The imperial decree (art. 35, par. 2) shall specify the regular order in which the other members of the great senate shall participate in the decisions.

## ARTICLE 1718

PARAGRAPH 1. Article 1717, paragraph 1, shall be correspondingly applicable, if a judgment senate of a State insurance office desires to dissent in a fundamental legal question from an officially published decision of the Imperial Insurance Office.

PAR. 2. The referring senate of the State insurance office shall send one of its members to the proceedings of the great senate; he shall become an associate in the great senate. Moreover, a member of another State insurance office who, according to a detailed regulation of the State government, shall be designated in advance for a fiscal year, shall be added as a member of this senate. The imperial decree (art. 35, par. 2) shall specify which State insurance office shall delegate the second member. If only one State insurance office exists, it shall send two members.

## ARTICLE 1719

The State government shall specify the procedure to be followed if a senate of a State insurance office desires to dissent from the decision of another senate of the same State insurance office.

## ARTICLE 1720

PARAGRAPH 1. The decisions of the senates shall be signed by the president, the one reporting and another member of the Senate.

PAR. 2. If the president or the one reporting is unable to serve, another member of this senate shall sign for him.

## ARTICLE 1721

The decree which rectifies a decision (art. 1673) shall be issued by the president and by those members of the senate who have signed the judgment; the decree can not be contested.

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Code of January 1, 1913

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## IV. REOPENING OF THE PROCEDURE

*1. Grounds for contesting*

## ARTICLE 1722

PARAGRAPH 1. A procedure concluded by a valid decision may be reopened if—

1. The judgment authority was not constituted according to regulations;
2. A person has participated in the decision, who on legal grounds is not permitted to participate unless this hindrance has been successfully brought forward either by a disqualification or remedies at law;
3. A person has participated in the decision although he has been disqualified as being prejudiced, and the disqualification was declared as well founded;
4. A party was not represented in the procedure as required by the provisions of the law, in so far as he has not expressly or tacitly approved the conduct of the dispute.

PAR. 2. In the cases mentioned in numbers 1 and 3 the reopening is not permissible if the ground for contesting could have been made valid by a remedy at law.

## ARTICLE 1723

The reopening is also permissible if—

1. A document, on which the decision is based, has been fraudulently made out or was forged;
2. In swearing to testimony or expression of opinion, on which the decision is based, the witness or expert has either purposely or negligently violated the obligation imposed by the oath;
3. The representative of the party, or the opponent or his representative, has obtained the decision by an action punishable with a public penalty;
4. A person has participated in the decision who at the proceedings has violated his official obligations toward the party, in so far as such violation is punishable by a public penalty;
5. A criminal judgment on which the decision is based has been abrogated by another judgment which has become valid;
6. A party subsequently finds or becomes able to use a document which would have brought about a decision more favorable to him.

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Code of January 1, 1913

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## ARTICLE 1724

The reopening is only permissible in the cases of article 1723, numbers 1 to 4, if—

1. A valid criminal sentence has been rendered on account of the penal act;
2. A judicial criminal procedure could not be instituted or concluded for reasons other than absence of proof.

## ARTICLE 1725

In all of the cases of article 1723 the reopening is permissible only if the party, without any fault of his own, could not make valid the ground for contesting in the previous proceeding, especially by the use of a remedy at law.

## ARTICLE 1726

Together with the application for a reopening, the grounds for contesting which relate to an older decision of the same or of the lower authorities may be made valid if the contested decision is based on the older one.

*2. Competence*

## ARTICLE 1727

PARAGRAPH 1. The judgment office whose decision has been contested shall decide on the application.

PAR. 2. If several decisions have been contested which were issued by judgment offices of different rank, the decision shall rest with the judgment office of higher rank. The superior insurance office shall decide in the place of the Imperial Insurance Office (or the State insurance office) if a judgment has been contested which was issued in a reviewing procedure on the basis of article 1723, Nos. 1, 2, 5, or 6.

*3. Course of the procedure*

## ARTICLE 1728

PARAGRAPH 1. The application must be filed within one month.

PAR. 2. The time limit begins with the date on which the party learns the ground of contesting, but not before the decision becomes effective. After the expiration of five years, beginning with the date of validity, the application is no longer permissible.

PAR. 3. The provisions of paragraph 2 shall not be applicable if the application is made for a reopening on account of inadequate representation.

## Code of January 1, 1913

The time limit begins then from the date on which the judgment was delivered to the party or, if he was not able to conduct the litigation himself, to his legal representative.

## ARTICLE 1729

The reopening may also be started on the initiative of the officials.

## ARTICLE 1730

The provision of article 129, paragraphs 2 and 3, relating to the observance of the time limit, is also correspondingly applicable to the time limits of exclusion mentioned in article 1728.

## ARTICLE 1731

PARAGRAPH 1. If the application is belated or is not permissible, the president of the judgment office can disallow it without oral proceedings by a decree which states the reasons therefor. The president of the judgment senate may do so only if he concurs therein with the one reporting.

PAR. 2. The applicant may appeal within one week after the delivery of the decision to the competent authority. The decree must refer to this fact.

## ARTICLE 1732

PARAGRAPH 1. If the application has been made in due time and is permissible, the principal matter shall be tried anew in so far as the grounds for contesting relate to it.

PAR. 2. Those provisions are applicable to the new procedure which are valid for the authority to which the new procedure has been referred.

## ARTICLE 1733

Remedies at law shall be permissible in so far as they are stated—if they are stated—against the decisions of the authorities which have to deal with the reopening.

*4. Final provisions*

## ARTICLE 1734

With the approval of the Federal Council the reopening may by imperial decree be regulated in some other manner than that given in the preceding provisions.



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Code of January 1, 1913

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## SECTION THREE.—SPECIAL KINDS OF PROCEDURE

## I. CONTROVERSIES OF SEVERAL INSURANCE CARRIERS IN REGARD TO THE OBLIGATION TO FURNISH COMPENSATION

## ARTICLE 1735

If an accident insurance carrier is of the opinion that although an accident requiring compensation exists, the compensation should not be granted by it, but by another insurance carrier, then it shall grant the beneficiary a provisional relief, communicate the proceedings to the other insurance carrier, and request it to acknowledge its obligation to furnish compensation.

## ARTICLE 1736

PARAGRAPH 1. If the other insurance carrier declines to admit its obligation to furnish compensation or does not make a declaration within six weeks, the matter shall be referred to the Imperial Insurance Office. The latter shall decide by judicial procedure which insurance carrier is liable to compensation.

PAR. 2. Where a State insurance office exists it shall decide if the district of the insurance carriers affected does not extend beyond the territory of the federal State. But in so far as an insurance carrier is participating, for which the Imperial Insurance Office or another State insurance office is competent, then the decision shall be made by the Imperial Insurance Office.

PAR. 3. Articles 1701, 1702, 1708, paragraph 2, 1712, 1714, and 1716 to 1721 are here correspondingly applicable. The decision shall be delivered to the insurance carriers affected and to the beneficiary.

## ARTICLE 1737

The Imperial Insurance Office (or the State insurance office) may summon to the procedure other insurance carriers according to article 1736. They can be ordered to pay a compensation, even if the claim against them has already been disallowed with legal effect. Article 1704 is here applicable.

## ARTICLE 1738

If the other insurance carrier (art. 1735) acknowledges its obligation to furnish compensation, or if it has been declared liable to compensation by the Imperial Insurance Office, it shall refund all expenditures to the insurance carrier which has provided the provisional relief. Controversies over claims for reimbursement shall be decided by judgment procedure.

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Code of January 1, 1913

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## II. PROCEDURE OF DISTRIBUTION

## ARTICLE 1739

If the employment in which an accident occurred was carried on for several establishments or activities which are insured with different insurance carriers, then the insurance carriers affected may distribute the burden of compensation among themselves.

## ARTICLE 1740

PARAGRAPH 1. If they can not agree, the Imperial Insurance Office (judgment senate) may on application of one of them distribute the burden of compensation according to its own discretion.

PAR. 2. Where a State insurance office exists it has the right to do so, if the district of the insurance carriers affected does not extend beyond the territory of the federal State. In so far as an insurance carrier participates, for which the Imperial Insurance Office or the State insurance office is competent, the authority is vested in the Imperial Insurance Office.

PAR. 3. Articles 1701, 1702, 1712, 1714, and 1716 to 1721 are correspondingly applicable.

## ARTICLE 1741

An accident insurance carrier not affected by the dispute may be required to contribute a part of the contribution, even though the claim against it has already been disallowed with legal effect.

## ARTICLE 1742

All insurance carriers who are affected by the cost shall be called in to the procedure dealing with the amount of the compensation.

## III. DETERMINATION OF THE VALIDITY OF A CLAIM TO A WIDOW'S PENSION

## ARTICLE 1743

If a widow, before she is an invalid, makes a claim on the basis of the survivor's insurance, the amount of her widow's pension shall on her application be determined and the widow shall be informed of her right to make application for payment after the invalidity occurs (decision on the validity of a claim).

## IV. CONTESTING THE FINAL DECISIONS OF THE INSURANCE CARRIER

## ARTICLE 1744

PARAGRAPH 1. Against a valid decision or a final decision of an insurance carrier a new examination can be applied for or undertaken if one

Code of January 1, 1913

of the conditions mentioned in article 1723, Nos. 1 to 3, 5 or 6, are present.

PAR. 2. Articles 1724 to 1734 are here correspondingly applicable.

#### SECTION FOUR.—SPECIAL PROVISIONS FOR THE NAVIGATION ACCIDENT INSURANCE

##### I. GENERAL PROVISIONS

###### ARTICLE 1745

The provisions relating to the determination of the benefits are also applicable to the navigation accident insurance in so far as articles 1746 to 1770 do not prescribe otherwise.

##### II. REPORTING OF ACCIDENTS

###### ARTICLE 1746

PARAGRAPH 1. An accident, sustained by a person employed on a sea-going vessel during the voyage, and which has the consequences designated in article 1552, paragraph 1, shall be recorded in the journal (ship's journal, log book) and be briefly described there or in an appendix.

PAR. 2. If no journal is kept, then the master of the vessel shall make a special written report of such accident.

###### ARTICLE 1747

PARAGRAPH 1. The master of the vessel shall deliver a copy of each entry of this kind, attested by him, to that marine office (*Seemannsamt*) where it may first be done. In place of it he may also submit the ship's journal or the written record to the marine office (*Seemannsamt*) for the purpose of making of a copy.

PAR. 2. The marine office (*Seemannsamt*) shall return the ship's journal or the written record within 24 hours.

###### ARTICLE 1748

If the accident occurs in Germany before or after the voyage, the master of the vessel shall not later than the third day after he has learned of it report it to the marine office (*Seemannsamt*), or if there is none in the place, to the local police authority, as well as to the administrative body of the association specified in the constitution.

###### ARTICLE 1749

The marine office (*Seemannsamt*) or the local police authority shall transmit the copies and reports to the marine office of the home port.

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Code of January 1, 1913

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## ARTICLE 1750

PARAGRAPH 1. In the case of small scale establishments engaged in marine navigation, as well as of sea and coast fishing (arts. 1186 and 1187), the accident report shall be directed to the local police authority in Germany in whose district the accident has occurred or where the injured person first remains after the accident.

PAR. 2. Special records of accidents on board are not to be kept.

## ARTICLE 1751

The Imperial Insurance Office shall draw up the model form for the description of accidents and for the records.

## ARTICLE 1752

Articles 1552 to 1558 shall otherwise be applicable to the reporting of accidents.

## III. INVESTIGATION OF ACCIDENTS

## ARTICLE 1753

PARAGRAPH 1. The accident shall be investigated by a marine office (*Seemannsamt*) or by the German local police authorities with corresponding application of articles 1559, 1563, paragraph 4, and 1564 to 1567.

PAR. 2. Articles 1754 to 1766 take the place of articles 1560 to 1562, and 1563, paragraphs 1 to 3.

## ARTICLE 1754

PARAGRAPH 1. If the accident must be investigated in a foreign country, the master of the vessel shall before that German consular office (*Konsulat*) before which it can first be done, with the assistance of two ship's officers or other trustworthy persons, make a solemn declaration of the facts, which are to be established according to article 1565.

PAR. 2. For the purpose of determining the matter, the marine office (*Seemannsamt*) may also obtain the solemn declaration of other persons and secure other proofs.

## ARTICLE 1755

PARAGRAPH 1. If the accident is to be investigated in Germany, the master of the vessel shall apply for it at a marine office (*Seemannsamt*), or where none exists in the place, at a German local police authority.

PAR. 2. The authority invoked shall conduct the investigation.

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Code of January 1, 1913

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## ARTICLE 1756

Accidents in German establishments conducting floating docks and other establishments designated in article 1046, No. 3, shall be investigated by the local police authority to which the accident was reported.

## ARTICLE 1757

On application of the parties affected the higher administrative authority may transfer the investigation to another marine office (*Seemannsamt*) or to other local police authorities.

## ARTICLE 1758

In the establishments administered by the Empire or a federal State, the investigation shall be conducted by the service authorities to which they are subordinated. It may be transferred to other authorities.

## ARTICLE 1759

Article 42 of the Navigation Code is correspondingly applicable to the obligation of the ship's crew to coöperate in the case of declarations or proceedings for the purpose of the investigation of accidents.

## ARTICLE 1760

PARAGRAPH 1. Articles 1562 and 1563, paragraphs 1 to 3, are as far as practicable applicable to the calling in of the parties affected to the investigation.

PAR. 2. Experts shall be called in on application of the undertaker of an establishment and of the master of the vessel; the costs shall be paid by the insurance carrier.

## ARTICLE 1761

PARAGRAPH 1. A special declaration (*Verklärung*) (art. 552 of the Commercial Code), in compliance with the requirements of articles 1565 and 1760, shall take the place of the solemn declaration and of the investigation of the accident.

PAR. 2. The exemption from fees and stamp taxes (art. 137) is also applicable to the special declaration (*Verklärung*) (par. 1), which is made before German authorities, and to the investigation of the accident at the marine office (*Seemannsamt*).

## ARTICLE 1762

The authority shall transmit to the directorate of the accident association a certified copy of the investigation proceedings or of the special declaration.

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Code of January 1, 1913

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## ARTICLE 1763

For the accidents having the consequences specified in article 1559, paragraph 1, the provisions of the law relating to the investigation of marine accidents are applicable as to the obligation—

1. Of the courts, port authorities, coast authorities, marine offices (*Seemannsamter*) officials in charge of the ship registers, to report without delay marine accidents which have come to their knowledge (art. 14, *ibid.*);
2. Of the German marine offices in foreign countries to undertake the investigations which can not be deferred and the collection of evidence in marine accidents which have come to their knowledge (art. 15, *ibid.*).

## ARTICLE 1764

PARAGRAPH 1. The accident reports (art. 1763) shall be forwarded to the directorate of the association.

PAR. 2. In addition, the obligation to report marine accidents to a marine office (*Seemannsamt*) continues to exist.

## ARTICLE 1765

If, within six months after the cognizance of the accident, the marine office (*Seemannsamt*) of the home port has not received any news relating to the investigation, it shall itself institute the investigation.

## ARTICLE 1766

PARAGRAPH 1. In the case of small scale establishments engaged in marine navigation, as well as of the sea and coast fishing establishments (arts. 1186 and 1187), the local police authorities to which the accident has been reported shall investigate it.

PAR. 2. On application of the parties affected, the higher administrative authorities may transfer the investigation to other police authorities.

## IV. PENAL PROVISIONS

## ARTICLE 1767

PARAGRAPH 1. The directorate of the association may impose fines of not more than 300 marks [\$71.40] upon any person who violates the provisions relating to—

The entry in the journal (ship's journal) or other record of the accident;

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Code of January 1, 1913

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The communication of the entry;  
The making of solemn declarations;  
The inauguration of the investigation.

PAR. 2. The ship owner is liable, according to article 1183, for the fines imposed on him or on the master of the vessel.

PAR. 3. On appeal the superior insurance office decides finally.

## V. COMPETENCE OF THE ADMINISTRATIVE BODIES FOR DETERMINATIONS

### ARTICLE 1768

If, according to article 1568, the directorate of the section must determine the accident compensation, then that section in the district of which the home port of the vessel is situated, or the establishment has its seat, is competent.

### ARTICLE 1769

In all of the cases mentioned in article 1568 the constitution of the navigation accident association may transfer the determination as follows:

To another administrative body of the association;  
To a committee of the directorate of the association or of the section;  
To special commissions;  
To local representatives (district agents).

## VI. CONTROVERSIES

### ARTICLE 1770

PARAGRAPH 1. Articles 1108 and 1109 shall be applicable to controversies relating to claims of seamen arising out of the provisions of articles 1083 to 1086, 1092, 1104, and 1106.

PAR. 2. The same is applicable to claims of seamen which, according to article 1094, have been transferred to the insurance carrier.

## B. OTHER JUDGMENT MATTERS

### I. GENERAL PROVISIONS

### ARTICLE 1771

For controversies which must be settled not by determination procedure, but according to the specific provisions of this law by judgment procedure, articles 1636 to 1734 are correspondingly applicable in so far as articles 1772 to 1779 do not prescribe otherwise.

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Code of January 1, 1913

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## II. COMPETENCE

## ARTICLE 1772.

The local insurance office (judgment committee) decides disputes of the kind designated in article 1771.

## ARTICLE 1773

The local insurance office which must decide the dispute over the principal claim is also competent for all claims relating to reimbursement, refunding, and other claims arising out of the principal claim.

## ARTICLE 1774

PARAGRAPH 1. If the principal claim shall not be decided by a local insurance office, or if the claim for reimbursement has originated out of the obligation of a commune, a poor-law union, an undertaker of an establishment, or a fund for the relief of indigent persons (arts. 1531, 1541), then that local insurance office is competent in whose district the insured person resides or is employed.

PAR. 2. If the insured person has no place of residence or employment in Germany, or if he has died or is not accounted for, then article 1638 shall be applicable.

## ARTICLE 1775

A dispute between a sick fund which is subordinated to a local insurance office on the one hand and a miners' sick fund or substitute fund on the other shall be decided by the local insurance office.

## III. OTHER PROVISIONS

## ARTICLE 1776

Only the remedy at law, but not the application for oral proceedings, is permissible against preliminary decisions.

## ARTICLE 1777

Only the review shall be permissible against judgments of the judgment chambers.

## ARTICLE 1778

PARAGRAPH 1. The review is not permissible in the case of reimbursement and refunding claims if the matter to be settled deals with temporary benefits.



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Code of January 1, 1913

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PAR. 2. It is, however, permissible for reimbursement and refunding claims which are regulated in book 5 of this law.

#### ARTICLE 1779

The appeal and the review effect a stay if the matter to be settled deals with claims for reimbursement.

### C. DECISION PROCEDURE

#### SECTION ONE.—GENERAL PROVISIONS

#### ARTICLE 1780

The decisions of the insurance authorities are arrived at by decision procedure, in so far as this law does not prescribe the judgment procedure.

#### ARTICLE 1781

PARAGRAPH 1. The law determines which decision matters shall be determined by the decision committee, decision chamber, or decision senate. Decision matters which, according to the law, shall be decided by the decision committee shall, in so far as appeal to decision procedure is permissible, be decided by the decision chamber and decision senate. This shall be correspondingly applicable to decision matters which, according to the law, shall be decided by the decision chamber as authority of first instance.

PAR. 2. The president of the decision chamber may also refer to it other decision matters if the matters to be settled deal with questions of fundamental importance; he must do so, if in case of differences of opinion a member, who participated in the preparation of the matter, makes application therefor. This shall be correspondingly applicable to the decision senate.

PAR. 3. Members of the Imperial Insurance Office (or the State insurance office), who are charged with the preparation of the matter, may be called into the decisions of the decision senate according to the detailed specifications of the decrees relating to the procedure (art. 35, par. 2, and art. 109, par. 1).

PAR. 4. In other respects these decrees shall specify who shall settle decision matters.

#### ARTICLE 1782

The employers and insured persons elected from the corresponding field of the accident insurance shall be called into the proceedings of the decision senates in matters of the accident insurance.

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Code of January 1, 1913

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## ARTICLE 1783

PARAGRAPH 1. In matters of the sickness insurance, the local insurance office or the superior insurance office, in the district of which the fund affected has its seat, is locally competent as the authority of first instance of the decision procedure, in so far as this law does not provide otherwise.

PAR. 2. If several funds are affected, which have their seat in the district of several local insurance offices, then the local insurance office of that fund to which the insured person belongs is competent. If he does not belong to any of them, or the matter to be settled deals with a dispute according to article 258, then the superior insurance office shall decide which local insurance office is competent. If the funds have their seats in the districts of different superior insurance offices, then the highest administrative authority shall determine the competent local insurance office or superior insurance office.

## ARTICLE 1784

In matters of the accident insurance the local insurance office or superior insurance office in whose district is located the seat of the establishment or where the insured activity is exercised, is locally competent as the authority of first instance of the decision procedure, in so far as this law does not provide otherwise.

## ARTICLE 1785

PARAGRAPH 1. In matters of the invalidity and survivors' insurance, the local insurance office or the superior insurance office in the district of which the employment which gives occasion for the decision took place, and in the case of voluntary insurance the local insurance office or the superior insurance office in whose district the insured person resides is locally competent as the authority of first instance of the decision procedure, in so far as this law does not provide otherwise.

PAR. 2. For claims of the survivors the local insurance office or superior insurance office is also competent, in whose district the survivors reside.

## ARTICLE 1786

PARAGRAPH 1. If an office believes itself not to be competent, but that another office is the competent one, then it shall transfer the matter to the latter.

PAR. 2. If this office also does not believe itself to be competent, then article 1640, paragraphs 2 and 3, shall be applicable.

## ARTICLE 1787

In the case of a dispute between a sick fund and a miners' sick fund or a substitute fund, article 1775 shall be applicable.

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Code of January 1, 1913

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## ARTICLE 1788

In so far as the highest administrative authorities have transferred decision rights to the administrative bodies specified in article 112, the decisions of these administrative bodies, as far as the legal remedies in the decision procedure are concerned, are equivalent to the decisions of the local insurance office.

## ARTICLE 1789

The same provisions as for the judgment procedure shall also be applicable to the disqualification and nonacceptance of persons, the elucidation of the state of affairs, as well as the securing of evidence.

## ARTICLE 1790

PARAGRAPH 1. The proceedings of the decision procedure are not public. With reservation of article 78, paragraph 3, article 1667 shall be correspondingly applicable to the voting of decision authorities for the decision chamber.

PAR. 2. The decision shall be delivered to the parties affected.

## SECTION TWO.—APPEALS

## ARTICLE 1791

An appeal against the decisions of the insurance carriers is permissible in so far as this law does not provide otherwise. The appeal shall be directed—

In matters of the sickness, and invalidity and survivors' insurance, to the local insurance office;

In matters of the accident insurance, to the superior insurance office.

## ARTICLE 1792

Against the decisions of the local insurance office as the authority of first instance the appeal to the superior insurance office is permissible, in so far as this law does not provide otherwise.

## ARTICLE 1793

Against the decisions of the superior insurance office as the authority of first instance the appeal to the Imperial Insurance Office (or the State insurance office, art. 1800) is permissible, in so far as this law does not provide otherwise.

## ARTICLE 1794

The authority which has to decide on the appeal may postpone the execution of the decision.

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Code of January 1, 1913

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## ARTICLE 1795

If the appeal is permissible and has been filed in due time the parties affected shall be given a hearing.

## ARTICLE 1796

If the appeal is well founded, the authorities competent for the decision may either decide in the matter themselves or refer it back to an authority of lower instance or to the insurance carrier whose decision has been contested. Article 1715, paragraph 2, shall in such case be correspondingly applicable.

## SECTION THREE.—FURTHER APPEALS

## ARTICLE 1797

PARAGRAPH 1. In so far as this law does not provide otherwise, there is permissible against the decision issued on appeal by—

The local insurance office, the further appeal to the superior insurance office;

The superior insurance office, the further appeal to the Imperial Insurance Office (or the State insurance office).

PAR. 2. The same provisions shall be applicable to the procedure as to the appeal.

## ARTICLE 1798

The decisions issued on further appeal by the superior insurance office are final.

## ARTICLE 1799

If the superior insurance office desires to dissent in a case, in which it must decide finally, from an officially published and fundamental decision of the Imperial Insurance Office (or the State insurance office), or the matter to be settled in such a case deals with an interpretation of legal provisions of fundamental importance which have not yet been determined, then article 1693 shall regulate the procedure.

## ARTICLE 1800

PARAGRAPH 1. Where a State insurance office exists, it shall decide on decision matters, if the district of the insurance carrier affected does not extend beyond the territory of the federal State. Otherwise the decision shall be made by the Imperial Insurance office.

PAR. 2. In so far as an insurance carrier is affected, for which according to paragraph 1 the Imperial Insurance Office or another State insurance

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Code of January 1, 1913

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office is competent, the decision shall be made by the Imperial Insurance Office.

#### ARTICLE 1801

The provision of article 1716 relating to the publication of fundamental decisions shall also be applicable to decision matters.

### D. COSTS AND FEES

#### I. COSTS OF THE PROCEDURE

#### ARTICLE 1802

If a party affected has wilfully or through obstructive measures or deception caused expenditures in the procedure, the insurance authority can charge the same to him, either wholly or partly.

#### ARTICLE 1803

PARAGRAPH 1. In judgment matters of the sickness insurance the superior insurance office shall impose a fee upon the defeated party. It shall be fixed in proportion to the value of the thing in dispute, but shall not exceed 20 marks [\$4.76] and shall be determined in the decision.

PAR. 2. The imperial decree relating to the procedure (art. 35, par. 2) shall determine the particulars hereto.

PAR. 3. The highest administrative authority shall regulate the collection of the fee.

#### II. FEES OF LAWYERS

#### ARTICLE 1804

PARAGRAPH 1. The compensation for the professional services of lawyers in the procedure before insurance authorities shall be determined according to a schedule of fees.

PAR. 2. The schedule of fees shall be issued by imperial decree with the approval of the Federal Council and for the procedure before the State insurance office by the State government.

#### ARTICLE 1805

An agreement as to higher amounts than those provided by the schedule of fees is void.

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Code of January 1, 1913

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**INTRODUCTORY LAW FOR THE WORKMEN'S INSURANCE CODE.<sup>1</sup>****SECTION A.****I. GENERAL PROVISIONS****ARTICLE 1**

As far as the measures for its administration are concerned, the Imperial Insurance Code shall come into force at once.

**ARTICLE 2**

PARAGRAPH 1. The provisions of its fourth book and the other provisions of the Imperial Insurance Code necessary for their operations come into force on January 1, 1912.

PAR. 2. On this date article 15 of the customs-tariff law of December 25, 1902 (Reichs-Gesetzblatt, p. 303), shall be repealed. The sums accumulated and the interest (survivors' insurance fund, law of Apr. 8, 1907, Reichs-Gesetzblatt, p. 89) shall be used for the subsidies of the Empire for the survivors' insurance (arts. 1284 and 1285 of the Imperial Insurance Code).

**ARTICLE 3**

The administration of the survivors' insurance fund shall be transferred to the imperial chancellor (Imperial Treasury Department) under the supervision of the imperial public debt commission. The law of June 1, 1909, on the administration of the imperial invalidity fund and the survivors' fund (Reichs-Gesetzblatt, p. 469), is repealed from October 1, 1911, as far as it relates to the survivors' fund.

**ARTICLE 4**

PARAGRAPH 1. The dates on which the other provisions of the imperial insurance law will come in force shall be determined by imperial decree with the approval of the federal Council.

PAR. 2. For the period up to December 31, 1914, the Federal Council may specify according to need, as to the term of office of the present representatives of the undertakers or other employers, as well as of the insured persons, in insurance authorities, lower administrative authorities,

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<sup>1</sup> Einführungsgesetz zur Reichsversicherungsordnung. (Nr. 3922.) Vom 19. Juli 1911. Reichs-Gesetzblatt Aug. 1, 1911, pp. 839 ff.

and insurance carriers. This is also applicable to nonpermanent members of the Imperial Insurance Office. For the nonpermanent members of the State insurance offices the highest administrative authority is competent in this regard.

#### ARTICLE 5

On these dates (art. 2, and art. 4, par. 1), as far as this law does not provide otherwise, the Imperial Insurance Code takes the place of the corresponding provisions—

Of the sickness insurance law of June 15, 1883 (Reichs-Gesetzblatt, p. 73), in the form of April 10, 1892 (Reichs-Gesetzblatt, p. 379), and of the laws of June 30, 1900 (Reichs-Gesetzblatt, p. 332), and of May 25, 1903 (Reichs-Gesetzblatt, p. 233);

Of the law concerning the accident and sickness insurance of persons employed in agricultural and forestry establishments, of May 5, 1886 (Reichs-Gesetzblatt, p. 132), B. sickness insurance;

Of the law concerning the amendment of the accident insurance laws of June 30, 1900 (Reichs-Gesetzblatt, p. 573);

Of the industrial accident insurance law of June 30, 1900, in the form of the publication of July 5, 1900 (Reichs-Gesetzblatt, p. 585);

Of the accident insurance law for agriculture and forestry of June 30, 1900, in the form of the publication of July 5, 1900 (Reichs-Gesetzblatt, p. 641);

Of the accident insurance law for the building trades of June 30, 1900, in the form of the publication of July 5, 1900 (Reichs-Gesetzblatt, p. 698);

Of the navigation accident insurance law of June 30, 1900, in the form of the publication of July 5, 1900 (Reichs-Gesetzblatt, p. 716);

Of the invalidity insurance law in the form of the publication of July 19, 1899 (Reichs-Gesetzblatt, p. 463).

#### ARTICLE 6

PARAGRAPH 1. With reservation of paragraph 2 and of articles 85 to 99, the provisions of the Imperial Insurance Code relating to time limits are also in force for the time limits whose duration began before the dates specified in articles 2 and 4 but were not completed on these dates.

PAR. 2. The time limit shall be specified according to the old law, if it would be longer according to that than according to the Imperial Insurance Code.

PAR. 3. The beginning of the time limits shall be specified according to the old law.

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Code of January 1, 1913

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## II. INSURANCE AUTHORITIES

## ARTICLE 7

PARAGRAPH 1. In so far as the provisions of the Imperial Insurance Code come into force, before the local insurance offices and superior insurance offices are established, then the duties assigned to them by those provisions or this law shall be assumed as follows:

In the case of judgment matters, the lower administrative authority shall take the place of the local insurance offices, and the arbitration courts that of the superior insurance offices;

In other respects, by the authorities specified by the highest administrative authority.

PAR. 2. The provisions contained in the following articles for local insurance offices and superior insurance offices are also applicable to these authorities.

## ARTICLE 8

PARAGRAPH 1. In place of the insurance representatives, the local insurance office shall call in the representatives of the employers and of the insured persons at the lower administrative authority or at the local pension office (*Rentenstelle*) (arts. 61, 81, and 82 of the invalidity insurance law).

PAR. 2. As far as the district of an existing authority (art. 7) is not covered by that of the corresponding insurance authorities, the highest administrative authority shall determine particulars concerning the calling in of representatives or associates. The same is applicable where these duties are transferred to authorities other than the arbitration courts for workmen's insurance.

## ARTICLE 9

PARAGRAPH 1. On application of sick funds affected the local insurance office may decree that special representatives of the employers and insured persons shall be elected in equal numbers for its decisions relating to the forming and changing of the external and internal constitution of the sick funds. The election is governed according to articles 61 to 63 of the invalidity insurance law. However, the local insurance office can determine the number of the representatives according to need; in this case only the local, establishment, building, and guild sick funds, and the sickness insurance of the communes, are entitled to vote.

PAR. 2. The union of communes (arts. 526 and 527 of the Imperial Insurance Code) shall appoint one or more representatives to look after the rights of the groups which the Imperial Insurance Office has newly admitted to the sickness insurance.



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Code of January 1, 1913

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PAR. 3. The highest administrative authority may specify the particulars herewith.

#### ARTICLE 10

Competent employees who on account of the reorganization are no longer needed in the service of the insurance carriers shall, as far as possible be given consideration in the appointment of new employees.

#### ARTICLE 11

PARAGRAPH 1. The superior insurance office shall assume the rights and duties of the arbitration court for workmen's insurance. The documents are to be transferred to the superior insurance office. The State shall pay a proper compensation for the furniture in so far as it is not its property. In case of dispute, an arbitration court shall decide, according to articles 1025 et sequentia of the Code of Civil Procedure.

PAR. 2. The highest administrative authority may specify the particulars.

#### ARTICLE 12

If the highest administrative authority so orders, the insurance association shall until April 1, 1912, permit the superior insurance office to retain those officials whom it has placed at the disposition of the arbitration court for workmen's insurance.

#### ARTICLE 13

If a State insurance office is discontinued, the imperial chancellor, with the approval of the competent highest administrative authority, shall regulate the transfer of its powers to the Imperial Insurance Office.

### III. SICKNESS INSURANCE

#### ARTICLE 14

PARAGRAPH 1. The imperial decree (art. 4) shall specify the date up to which the communal sickness insurance shall be closed. Articles 282 to 284 and 300 to 305 of the Imperial Insurance Code are correspondingly applicable to the closing. Assets shall be treated in the same manner as property of the communal sickness insurance. Article 294, paragraphs 1, 2, and 3, sentence 1, are here correspondingly applicable, but the additional funeral benefit shall be paid to all insured persons who are employed in a commune with such a special fund.

PAR. 2. Advances which have been paid according to article 9 of the

## Code of January 1, 1913

sickness insurance law shall be refunded as far as any assets remain after the liquidation of the affairs (art. 303 of the Imperial Insurance Code).

## ARTICLE 15

PARAGRAPH 1. If a district for which, according to the Imperial Insurance Code, a local sick fund would have to be established already has a common local sick fund (art. 16, par. 4, and art. 43, of the sickness insurance law), whose membership includes all persons subject to insurance in the local fund according to the sickness insurance law, it may be developed into a general local sick fund for it.

PAR. 2. If the membership of a common local sick fund already embraces a large part of the persons subject to insurance in the local fund of the district according to the sickness insurance law, then this fund, with the approval of the superior insurance office, may be developed into a general local sick fund.

PAR. 3. Membership in such funds shall in such case be extended to all insured persons whom the imperial Insurance Code assigns to the local sick funds.

## ARTICLE 16

If within the first three years after the Imperial Insurance Code comes into force the assets of a newly established local or rural sick fund are not sufficient to cover the expenditures which become due, then the union of communes must provide the necessary advances. The highest administrative authority may specify the particulars and determine the date up to which the advances shall be refunded.

## ARTICLE 17

The imperial decree (art. 4) shall specify the date up to which existing local sick funds for single or for several branches of industry or kinds of establishments or for members of one sex only, as well as existing establishment sick funds and guild sick funds, may submit to their local insurance office the application for authorization.

## ARTICLE 18

PARAGRAPH 1. A local sick fund may submit this application only if its general meeting has decided for it by a majority vote.

PAR. 2. In the case of an establishment sick fund, the employer may submit the application after a hearing of the insured person; in the case of a guild sick fund the guild may do so after a hearing of the journeymen's committee.

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Code of January 1, 1913

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## ARTICLE 19

Simultaneously with the application for authorization, or, in case this is not possible, later on within a time limit determined by the local insurance office, a draft of the constitution of the fund complying with the requirements of the provisions of the Imperial Insurance Code must be submitted.

## ARTICLE 20

The local insurance office (decision committee) shall investigate whether the conditions have been complied with under which the fund may be authorized, and shall transmit the application with the constitution and an opinion to the superior insurance office for decision. The parties affected have the right of appeal to the highest administrative authority within one month against the decision.

## ARTICLE 21

If, within six months after the date determined according to article 17, the constitution of a sick fund has not been made to correspond with the provisions of the Imperial Insurance Code, or if the application for admission has not been made in due time, the fund must be closed.

## ARTICLE 22

The superior insurance office shall specify whether a building sick fund shall continue as an establishment sick fund according to article 249 of the Imperial Insurance Code. It determines the amount of its benefits. If the constitution is not changed within the time limit specified, then it shall be changed on the initiative of the officials with legal validity.

## ARTICLE 23

On the authorization of a guild sick fund its property shall become part of its assets.

## ARTICLE 24

A person who has been a voluntary member of a guild sick fund until the present time is entitled to continue his membership.

## ARTICLE 25

PARAGRAPH 1. The imperial decree (art. 4) shall specify the date on the expiration of which the certificates issued to registered aid funds according to article 75a of the sickness insurance law become void.

## Code of January 1, 1913

PAR. 2. The application for authorization as substitute fund (art. 503 of the Imperial Insurance Code) may be granted only if the registered aid fund has submitted the application six months before this date.

## ARTICLE 26

On application and upon proof of the need therefor the Federal Council may also permit a mutual insurance association to be authorized as a substitute sick fund according to articles 503 et sequentia of the Imperial Insurance Code, if the association has been given a certificate as a registered aid fund according to article 75a of the sickness insurance law and such certificate is dated after April 1, 1909.

## ARTICLE 27

PARAGRAPH 1. The registered aid funds shall be considered as mutual insurance associations in the meaning of article 26 of this law, of articles 503 et sequentia, and of article 1438 of the Imperial Insurance Code until a law for the annulment of the law relating to registered aid funds (Reichs-Gesetzblatt, 1876, p. 125, and 1884, p. 54) comes into force.

PAR. 2. Until such a law comes into force, the following changes shall be made in the case of the aid funds and their members designated in article 503, paragraph 1, of the Imperial Insurance Code:

Article 504 of the Imperial Insurance Code shall replace article 6, paragraph 2, of the aid funds law (*Hilfskassengesetz*);

Article 508 of the Imperial Insurance Code shall replace article 12 of the aid funds law;

Article 509, paragraphs 1 to 3, of the Imperial Insurance Code shall replace article 13 of the aid funds law;

Article 511 of the Imperial Insurance Code shall replace article 15, sentence 3, of the aid funds law;

Article 512 of the Imperial Insurance Code shall replace article 15, sentences 4 and 5, of the aid funds law.

## ARTICLE 28

Registered aid funds which are not authorized as substitute funds shall in cases calling for relief, and which are in course of settlement after the date determined in article 25, paragraph 1, shall continue to grant the benefits to their members subject to insurance for the period provided by the constitution. Article 212 of the Imperial Insurance Code shall be correspondingly applicable to the sick fund of the insured person only after the expiration of this period. Controversies shall be decided by procedure of determination according to the Imperial Insurance Code.

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Code of January 1, 1913

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## ARTICLE 29

PARAGRAPH 1. If when the Imperial Insurance Code comes into force insured persons subject to insurance in rural sick funds are members of a local or an establishment (or a building) sick fund, they may—

1. Remain members of their fund if it continues to exist;
2. Become members of the local sick fund which accepts the members of their branch of industry or in the absence of such a fund and if their former fund is dissolved, become members of the general local sick fund.
3. Again become members of the local sick fund, if on account of a change in employment they have become members for a period of not more than 26 weeks in another local sick fund, in a rural sick fund, in an establishment sick fund, or in a guild sick fund in the district of the same local insurance office.

PAR. 2. If they have made use of this right (No. 3), they may at the close of a fiscal year go over to the rural sick fund, if they have notified the directorate of their withdrawal at least three months in advance.

## ARTICLE 30

In cases of insurance for which at the time this law comes into force the obligation of the sick fund to grant benefits still continues according to the old law, the provisions of the Imperial Insurance Code are applicable beginning with this date in so far as they are more favorable to the beneficiary.

## ARTICLE 31

Statutory provisions which according to article 51, paragraph 2, of the sickness insurance law exempt the employer from the payment of a contribution at his own expense may remain in force for not more than five years after the date determined according to article 4.

## ARTICLE 32

For employees of a fund which in consequence of the reorganization has been dissolved or closed, the period of expiration of the contract relation is extended to 12 months regardless of article 302, paragraph 1, of the Imperial Insurance Code. Competent employees who in consequence of the reorganization are no longer needed in the service of a sick fund shall as far as possible be given consideration by the insurance carriers in the appointment of new employees.

## ARTICLE 33

PARAGRAPH 1. On the approval or the drawing up of the service regulations, the superior insurance office shall specify in what manner and within

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Code of January 1, 1913

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what time the service regulations must be made known to all employees of the fund. At the time of the notification the attention of the employees shall be called to the provisions of articles 34 to 37 and 39.

PAR. 2. The service regulations shall come into force on the expiration of one month after the date specified by the superior insurance office according to paragraph 1.

#### ARTICLE 34

PARAGRAPH 1. With reservation of article 351, paragraph 2, of the Imperial Insurance Code, employees already in the service of sick funds before the promulgation of the service regulations are also subject to them in so far as according to State laws, they are not State or communal officials or exercise the rights and obligations of such officials according to article 359 of the Imperial Insurance Code.

PAR. 2. To these employees, all the provisions which the Imperial Insurance Code prescribes for employees subject according to it to the service regulations are also applicable. The contractual provisions which are permissible according to the Imperial Insurance Code and which relate to giving notice of dismissal or to discharge, if they have been agreed on with these employees before July 1, 1909, shall remain in force in so far as they do not run counter to articles 35 to 39.

PAR. 3. Employees of funds who give notice that they intend to resign before the service regulations come into force shall not be subject to them. If an employee gives such notice, then the service relation terminates on the expiration of six months, or if according to the contract, he may give notice of resignation at an earlier date than on such date.

#### ARTICLE 35

PARAGRAPH 1. If the payments to an employee who, according to article 34 is subject to the service regulations, exceed the rates of the schedule of salaries, these payments shall be continued if they have been agreed on in this amount before January 1, 1908, or agreed on according to a schedule of salaries formulated before that date, or if the service regulations specify such a rate.

PAR. 2. Otherwise the local insurance office (decision committee) may on application of the directorate of the fund permit the payments to be continued. The application may be submitted only within one month after the service regulations come into force.

PAR. 3. The approval shall be refused if the payments are in striking disproportion to the rates of the schedule of salaries. Otherwise the approval may be refused in so far as the value of the payments exceeds that

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Code of January 1, 1913

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of the payments according to the schedule of salaries by more than one-fourth or has been agreed on only after July 1, 1910.

PAR. 4. If the approval is refused, the directorate of the fund has the right to appeal to the superior insurance office (decision chamber). It shall decide finally.

PAR. 5. Whatever applies to the payments to an employee shall also be applicable to his rights to retirement pension, waiting-money (*wartegeld*), or similar payments, as well as to the provision for his survivors.

#### ARTICLE 36

If the higher payments according to article 35 can not be paid further, and if the employee is unwilling to continue the contract relation under the conditions of the new schedule of salaries after the date on which he could soonest be given notice to leave or be discharged, then the directorate shall at the earliest possible date make use of its right to give notice of dismissal or of discharge. Article 357, paragraph 2, of the Imperial Insurance Code is correspondingly applicable.

#### ARTICLE 37

PARAGRAPH 1. Within two years after the service regulations come into force the local insurance office (decision committee) may decree that an employee subject to its orders according to article 34, whose technical knowledge and efficiency are evidently not sufficient for his position, shall be assigned to another position in the service of the fund which corresponds to his technical knowledge and efficiency. This is subject to the proviso that the employee has not been employed by the fund more than five years in his present or a similar position. No conclusion regarding the lack of technical knowledge shall be based on the fact that the employee has not gone through a specified course of education.

PAR. 2. At the same time the local insurance office may specify that the employee shall continue to receive his higher payments, in so far as they are not conspicuously out of proportion to the rates which the salary schedule provides for the position newly assigned.

PAR. 3. The directorate and the employee shall be given a hearing before the decree is issued; it shall be delivered to both of them. On appeal the superior insurance office (decision chamber) shall decide, and on further appeal the Imperial Insurance Office (decision senate). The time limit for the appeal and for the further appeal is one month for each of them.

PAR. 4. Within one month after the transmission of the final decree the employee shall declare to the directorate whether he is willing to accept the position. If he is unwilling, then the directorate shall give him notice of dismissal with a time limit of six months. If it can terminate the con-

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Code of January 1, 1913

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tract relation at an earlier date, it shall as soon as possible make use of its right of giving notice of dismissal or of discharge. Article 357, paragraph 2, of the Imperial Insurance Code is correspondingly applicable.

#### ARTICLE 38

PARAGRAPH 1. Articles 349, 350, 354, paragraphs 2 to 6 and 358 of the Imperial Insurance Code shall at once come in force for all employees who in the future shall be subject to the service regulations. So long as the local insurance offices and the superior insurance offices have not been established, the courts of arbitration for workmen's insurance shall take the place of the local insurance office and the Imperial Insurance Office (or the State insurance office) that of the superior insurance office.

PAR. 2. The provisions of the Imperial Insurance Code relating to the judgment procedure are correspondingly applicable to the procedure and time limits. The imperial chancellor may specify the particulars in this connection.

#### ARTICLE 39

Legal actions which have been taken after January 1, 1908, shall be ineffective, in so far as they frustrate or materially impede the execution of articles 34 to 38. The same is applicable to contractual provisions made before the service regulations come into force which withdraw from the regular courts disputes relating to pecuniary affairs between the sick fund and the employees on account of or originating in the giving of notice of dismissal or discharge.

#### ARTICLE 40

If an employee during the period between May 30, 1911, and the coming into force of this law has been given notice of dismissal or received his discharge, the directorate shall, if he makes application within 14 days after the coming in force of this law, determine anew as to the giving of notice of dismissal or discharge; the earlier notice of dismissal or discharge becomes ineffective unless it is finally confirmed.

#### ARTICLE 41

Contract relations existing at the time when the Imperial Insurance Code comes into force between sick funds and hospitals shall terminate not later than two years after this date, in so far as they run counter to the application of article 184, paragraph 5 or of article 371, paragraph 2 of the Imperial Insurance Code.



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Code of January 1, 1913

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## ARTICLE 42

PARAGRAPH 1. Provisions of State laws which oblige the employer to make provision for the medical treatment and care of the sick domestic servants shall be abrogated.

PAR. 2. Provisions of the State laws which relate to the continuation of the payment of wages or of similar payments in times of sickness remain unaffected but with reservation of article 436 of the Imperial Insurance Code. •

## IV. ACCIDENT INSURANCE

## ARTICLE 43

PARAGRAPH 1. For branches of industry which the Imperial Insurance Code subjects to the accident insurance for the first time, the Federal Council shall specify to what extent new accident associations shall be established or how far the branches shall be assigned to existing accident associations.

PAR. 2. A hearing shall be given in advance to the representatives of the industry branches affected as well as to the associations affected.

## ARTICLE 44

Until the date of the membership assignment to the system of mutual trade associations of branches of industry, which have just been subjected to the accident insurance, the Federal Council, after a hearing of the directorates of the associations affected, may separate branches of industry from existing accident associations and assign them to another accident association, or establish for them a special accident association, even if the conditions do not exist under which the status of accident associations can be changed either according to the Imperial Insurance Code or to the old law.

## ARTICLE 45

PARAGRAPH 1. If a new accident association is established, a general meeting shall be called which decides on the constitution. The meeting shall consist of delegates from chambers of commerce, chambers of hand-work, chambers of industry, or similar economic bodies representative of the branches of industry affected.

PAR. 2. The highest administrative authority shall designate the bodies which may send delegates, and shall specify for each body the number of delegates according to its economic importance.

PAR. 3. If the district of an accident association extends beyond the territory of a federal State, the imperial chancellor after consultation with

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Code of January 1, 1913

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the highest administrative authority shall specify the bodies and the number of their delegates.

## ARTICLE 46

The Imperial Insurance Office shall convene the general meeting and direct the proceedings until a provisional directorate has been elected.

## ARTICLE 47

In the case of newly established accident associations, the first term of office of the representatives of the insured persons shall terminate on the same date on which the term of office of these representatives terminates in the case of the existing accident associations.

## ARTICLE 48

PARAGRAPH 1. The Imperial Insurance Office (or the State insurance office) shall specify the date up to which the accident associations shall decide on the changes in their constitutions according to the Imperial Insurance Code. This date shall be specified in such a manner that the constitutions may come in force at the time when the provisions of the Imperial Insurance Code relating to the accident insurance come in force.

PAR. 2. If the accident association does not comply with the decree in proper time, then the Imperial Insurance Office (or the State insurance office) shall change the constitution in accordance with its right of supervision.

## ARTICLE 49

Every undertaker of an establishment which the Imperial Insurance Code has for the first time subjected to the accident insurance shall, within a time limit to be determined and published by the Imperial Insurance Office, register the establishment at the local insurance office in whose district the establishment has its seat. The product and the class of the establishment and the average number of persons employed who are subject to insurance shall be stated.

## ARTICLE 50

PARAGRAPH 1. If the registration has not been made or is incomplete, the local insurance office shall itself give the data or supplement them according to its own knowledge of the conditions. By means of fines of not more than 100 marks [\$23.80] it may compel the undertakers to give information within the set time limit.

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Code of January 1, 1913

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PAR. 2. On appeal against the determination of the fine the superior insurance office decides finally.

#### ARTICLE 51

PARAGRAPH 1. The local insurance office shall make up a list of the establishments designated in article 49 of its district which indicates by branches of industry the product and the class of the establishments, as well as the number of employed persons who are subject to insurance.

PAR. 2. The list shall be submitted to the superior insurance office and if necessary be corrected by it.

#### ARTICLE 52

The superior insurance office shall transmit the lists of these establishments subject to insurance located in its district to the Imperial Insurance Office; the latter shall refer the establishments to the competent directorates of associations.

#### ARTICLE 53

Articles 49 to 52 are not applicable if the Empire, a federal State, a union of communes, a commune, or another public corporation is the insurance carrier.

#### ARTICLE 54

So long as the accident associations have not invested one-fourth of their assets in bonds of the Empire or of the federal States (art. 718, par. 1, arts. 984, and 1157, of the Imperial Insurance Code) they must invest annually at least one-third of the increase of their assets in such bonds.

#### ARTICLE 55

PARAGRAPH 1. Article 1, section 6, of the law relating to changes in the financial administration of July 15, 1909 (Reichs-Gesetzblatt, p. 743), shall be abrogated.

PAR. 2. With the approval of the imperial chancellor and within the first year after the coming into force of the third book of the Imperial Insurance Code the carriers of the accident insurance may pay to the Post Office Department in one amount the amounts still outstanding for the interest and refunding of the floating debt (arts. 779, 1028, and 1185, of the Imperial Insurance Code). An interest rate of  $3\frac{1}{2}$  per cent shall serve as basis in the computation of this sum.

PAR. 3. In the case of accident associations the general meeting of the association shall decide on the matter.

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Code of January 1, 1913

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## ARTICLE 56

If undertakers of establishments or of activities which for the first time have been subjected to accident insurance by the Imperial Insurance Code, and before the coming into force of book three of the Imperial Insurance Code, have already concluded insurance contracts with insurance enterprises against accidents of the kind described in the Imperial Insurance Code, then the association on their application shall assume the rights and obligations arising out of these contracts. The application must be submitted to the directorate within six months after the date designated. The transfer is effective from the date on which the accident insurance comes into force for the establishment or the activity.

## ARTICLE 57

The same is applicable if insurance enterprises before the coming into force of book three of the Imperial Insurance Code have concluded such contracts with insured persons employed in establishments or activities which for the first time have been subjected to accident insurance by the Imperial Insurance Code.

## ARTICLE 58

PARAGRAPH 1. Articles 56 and 57 are not applicable if the contracts have been concluded after the publication of the decree designated in article 4 and within the last three months before the coming into force of the third book of the Imperial Insurance Code.

PAR. 2. This provision shall not be applicable if within time designated the contract has been tacitly extended.

## ARTICLE 59

The expenditures incurred by the association from the taking over of insurance contracts shall be covered by assessments on the members, and in so far as the activity is insured on the premium basis in a branch institute this shall be considered at the next determination of the premiums.

## ARTICLE 60

PARAGRAPH 1. With reservation of articles 85, 87 to 93, and 96 to 99, the provisions of the Imperial Insurance Code shall, if they are more favorable to the beneficiaries, be applied to the first determination of claims for compensation resulting from accidents which have happened before the third book of the Imperial Insurance Code comes into force. This is only applicable if the beneficiary already had a claim to compensation

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Code of January 1, 1913

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according to the old law, and if on that date no legal decision on the matter has been made.

PAR. 2. Paragraph 1 is only applicable to claims of compensation resulting in the case of a death, if the death of the injured person has also occurred before the third book of the Imperial Insurance Code comes into force.

#### ARTICLE 61

In so far as a pension already determined has been suspended according to the old law, but not according to the new one, the provisions of the Imperial Insurance Code relating to the suspension of pensions are applicable to it beginning with the date when these provisions come into force; in such cases a new decision shall be announced.

#### ARTICLE 62

PARAGRAPH 1. The provisions relating to settlements to aliens by the payment of a capital sum corresponding to the value of their annuity, shall also be applicable to pensions which have been determined before these provisions come into force.

PAR. 2. If such a settlement is determined within the first three years after these provisions come into force, then the association may draw the means for it from the reserve. The reserve shall later be replaced according to decree of the Imperial Insurance Office (or the State insurance office).

#### ARTICLE 63

During the year 1913 the Federal Council shall lay before the Reichstag the legal provisions relating to reserves for a new decision.

### V. INVALIDITY AND SURVIVORS' INSURANCE

#### ARTICLE 64

PARAGRAPH 1. If insured persons become invalids within the first five years after the insurance obligation for their branch of industry has come into force, then the duration of such earlier employment, for which the insurance obligation has been introduced in the meantime, shall be included in the computation of the waiting term for the invalidity pension (art. 1278, No. 1, of the Imperial Insurance Code).

PAR. 2. It shall be included in the computation only in so far as the employment occurs within the last five years before the beginning of the invalidity, and only for such insured persons who, after the insurance obligation for their branch of industry comes into force as can prove the

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Code of January 1, 1913

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payment of at least 40 computable contributory weeks on the basis of the insurance obligation.

PAR. 3. Whether voluntary and compulsory contributions which have been legally used before the insurance obligation came into force shall be included in the computation, shall not be affected in this case.

#### ARTICLE 65

PARAGRAPH 1. Insured persons who, when the insurance obligation for their branch of industry comes into force, have completed their fortieth year of life, shall be credited in the computation of the waiting term for the old-age pension with 40 weeks for each full year of their age in excess of 40 years, and a proportionate number of weeks up to 40 for the part of such a year in excess.

PAR. 2. The insured persons must prove that during the three years immediately preceding the coming into force of the insurance, that they have been engaged in an employment as an occupation, even though with interruptions, which was already subject to insurance or has become such in the meantime. Whoever can prove a minimum of 200 computable contributory weeks on the basis of this insurance obligation for the first five years after the coming in force of the insurance obligation, is exempt from this proof.

#### ARTICLE 66

PARAGRAPH 1. In the cases mentioned in articles 64 and 65, a period of military service or sickness computable according to article 30, paragraphs 2 to 6 of the invalidity insurance law, or according to articles 1393 and 1394 of the Imperial Insurance Code, as well as the period of the former receipt of an invalidity pension (art. 47, par. 4 of the invalidity insurance law, and art. 1309 of the Imperial Insurance Code) is equivalent to a labor or service status for the period before the insurance obligation comes into force.

PAR. 2. The same is applicable for a maximum of four months during one calendar year to periods of—

1. Temporary interruption of a permanent labor or service status with a specified employer;
2. Such temporary interruptions which recur periodically (seasonal labor) in the case of an employment which is a regular occupation;
3. An employment undertaken for the purpose of gain in spinning, knitting, or similar light home work which is customary for weak or aged persons.

Code of January 1, 1913

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## ARTICLE 67

PARAGRAPH 1. If less than 400 contributory weeks have been proved at the granting of an old-age pension according to article 65, then contributions of that wage class which corresponds to the average annual earnings of the insured person during the three years specified in article 65, paragraph 2, sentence 1, shall be applied for the missing weeks; these shall be not lower than the contributions of the first wage class.

PAR. 2. If more than 400 contributory weeks have been proved, then the procedure shall be according to article 1293 of the Imperial Insurance Code.

## ARTICLE 68

In the computation of the waiting term for the claim to survivors' pensions (arts. 1252 and 1278, No. 1, of the Imperial Insurance Code) the contributions paid according to the invalidity insurance law shall also be included up to December 31, 1930. After this date only contributions paid for the period after January 1, 1912, shall be included in the computation of the waiting term.

## ARTICLE 69

In rating the survivors' benefits (arts. 1292 and 1296 of the Imperial Insurance Code) in order to compute the basic amount of the invalidity pension, the number of weeks short of 500 contributory weeks for the time after January 1, 1912, shall be made up from the highest contributions paid according to the invalidity insurance law. If the number of these contributions is not sufficient, Wage Class I shall be applied to the missing ones. Only contributions paid for the period after January 1, 1912, shall be included in the computation of the supplementary rates of increase.

## ARTICLE 70

To the extent that the invalidity insurance shall be extended to new branches of industry after January 1, 1912, article 64 shall be applied in the computation of the waiting term for claims of the survivors' insurance.

## ARTICLE 71

PARAGRAPH 1. Survivors of such insured persons who died before January 1, 1912, shall have no claim to the benefits provided by book four of the Imperial Insurance Code.

PAR. 2. The same is applicable to the survivors of such insured persons who, on the date named and in the meaning of article 5, paragraph 4, of the invalidity insurance law, were permanently disabled, and later died without having recovered their earning capacity in the meantime.

## Code of January 1, 1913

PAR. 3. Article 1291 of the Imperial Insurance Code is only applicable to persons in receipt of an invalidity pension whose permanent invalidity occurred after December 31, 1911, or whose pension begins after this date according to article 1255, paragraph 3, of the Imperial Insurance Code.

## ARTICLE 72

PARAGRAPH 1. Stamps of old denominations (art. 130 of the invalidity insurance law) shall no longer be used for the time after January 1, 1912.

PAR. 2. Within two years after the expiration of their validity, stamps no longer valid may be exchanged for valid stamps of the same money value at the places designated for their sale.

## ARTICLE 73

PARAGRAPH 1. After January 1, 1912, those persons who were exempt according to article 5, paragraphs 1 and 2, of the invalidity insurance law, again become subject to insurance, unless the conditions of article 1234 of the Imperial Insurance Code are applicable in their cases.

PAR. 2. The same is applicable for persons exempt according to article 6, paragraph 1, and article 7, of the invalidity insurance law, so long as they are not again exempted from the insurance obligation according to the Imperial Insurance Code.

## ARTICLE 74

If, before January 1, 1912, or within one year after this date, an insured person whose claim has lapsed again takes up an employment subject to insurance, or renews the insurance status by the payment of voluntary contributions, then the provisions of article 46, paragraph 4, of the invalidity insurance law shall continue to be applicable in regard to making the claim valid again, so long as the claim does not lapse a second time.

## ARTICLE 75

PARAGRAPH 1. Article 43 of the invalidity insurance law remains applicable to those persons who before January 1, 1912, have become permanently disabled by accident in the meaning of article 5, paragraph 4, of the invalidity insurance law.

PAR. 2. Article 44 of the invalidity insurance law remains applicable to the refund of contributions of those persons who have died before January 1, 1912. Article 1522, paragraph 1, sentences 1 and 2, of the Imperial Insurance Code, shall be correspondingly applicable if the death on which the claim to the refund of contributions is based has been caused by an accident which is to be compensated according to the accident in-



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Code of January 1, 1913

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surance laws. The insurance institute may demand reimbursement from the accident pension; articles 1507, 1523, and 1526 of the Imperial Insurance Code are in such case correspondingly applicable.

## ARTICLE 76

Contributions shall be refunded after January 1, 1912, according to article 42 of the invalidity insurance law, only if the application has been submitted before the publication of the Imperial Insurance Code.

## ARTICLE 77

For cases in which after January 1, 1912, contributions have still to be paid, article 128, paragraph 6, of the invalidity insurance law continues to be applicable.

## ARTICLE 78

Article 75, paragraph 2, sentences 2 and 3, and article 77, shall be correspondingly applicable to special institutes.

## ARTICLE 79

Claims to invalidity or old-age pensions for which on January 1, 1912, the determination procedure is still pending, are subject, with reservation of article 71, paragraph 3, and of articles 85, and 94 to 99, to the provisions of the Imperial Insurance Code, if these are more favorable to the beneficiaries. In so far as the Imperial Insurance Code is applicable, its nonapplication shall be considered a reason for revision (art. 1697 of the Imperial Insurance Code), even if the arbitration court could not yet apply it.

## ARTICLE 80

Article 61 is correspondingly applicable to invalidity and old-age pensions.

## ARTICLE 81

PARAGRAPH 1. The supervisory authority shall specify the date up to which the insurance institutes and the authorized special invalidity institutes (special institutes) must decide on the amendment of their constitutions according to the Imperial Insurance Code. This date is to be specified in such a manner that the constitutions may come in force on January 1, 1912.

PAR. 2. If an insurance carrier does not comply with the decree in due time, then the supervisory authority shall amend the constitution.

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Code of January 1, 1913

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## ARTICLE 82

Article 54 is correspondingly applicable to the insurance institutes.

## ARTICLE 83

PARAGRAPH 1. Up to March 31, 1912, special invalidity institutes authorized according to the laws of June 22, 1889, and July 13, 1899, shall be regarded by the Federal Council as special institutes according to articles 1360 to 1380 of the Imperial Insurance Code without a new authorization. When the survivors' insurance comes into force, they must grant survivors' pensions according to the Imperial Insurance Code.

PAR. 2. The validity of the contributions paid after survivors' insurance comes into force and up to March 31, 1912, may not be contested because their amount was afterwards proved to be insufficient.

## ARTICLE 84

During the year of 1915 the Federal Council shall present to the Reichstag the legal provisions relating to old-age pensions for a new decision.

## VI. PROCEDURE

## ARTICLE 85

If a procedure is already pending on the date on which the provisions of book 6 of the Imperial Insurance Code come into force then it shall be terminated according to the provisions in force up to the present time, unless articles 86 to 99 provide otherwise.

## ARTICLE 86

If, on the date specified in article 85, a procedure which is to be discharged according to article 58 (or according to art. 65, par. 3, art. 72, pars. 2 and 4, and art. 73, par. 1) of the sickness insurance law, is still pending before the supervisory authority of a communal sickness insurance or of a sick fund, then the matter is to be transferred to the local insurance office, if it has not yet been decided; the provisions of the Imperial Insurance Code are applicable to the further procedure.

## ARTICLE 87

The provision of article 86 is also applicable to the following cases in which—

1. The decision has been transferred to another authority in place of the supervisory authority (art. 58, par. 1, sentence 2, and art. 84, par. 3, of the sickness insurance law);

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Code of January 1, 1913

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2. On the date specified in article 85 a procedure is pending before the supervisory authority according to—

Article 136, paragraph 6, of the law of May 5, 1886, relating to the accident and sickness insurance of persons employed in agricultural and forestry establishments;

Article 26, paragraph 2, and article 27, of the industrial accident insurance law;

Article 29, article 31, paragraph 2, and article 32, of the accident insurance law for agriculture and forestry;

Articles 9 and 11 of the building accident insurance law;

Article 30, paragraph 2, articles 31 and 156, of the navigation accident insurance law;

Article 23, paragraph 2, of the invalidity insurance law.

#### ARTICLE 88

PARAGRAPH 1. The provisions of the Imperial Insurance Code are applicable to the determination for the first time of benefits of the accident insurance, if on the date specified in article 85 the preliminary decision has not yet been given (art. 70, par. 1, of the industrial accident insurance law, art. 76, par. 1, of the accident insurance law for agriculture and forestry, art. 37, par. 1, of the building accident insurance law, and art. 75, par. 1, of the navigation accident insurance law).

PAR. 2. The same is applicable to the new determination of benefits of the accident insurance in the form of treatment in a medical institution.

#### ARTICLE 89

The old provisions are applicable to the new determination of benefits, of the accident insurance after a change of condition, if before the date specified in article 85—

The beneficiary has been notified of the reasons on account of which the pension is to be reduced or withdrawn; or

The claim for an increase or for a second grant of the pension has been submitted; or

The application for a decision has been submitted to the arbitration court.

#### ARTICLE 90

PARAGRAPH 1. The provisions of the Imperial Insurance Code shall be applied if the insurance carrier has on the date specified in article 85 not yet received a notification, in cases in which—

Benefits of the accident insurance shall cease, because the right to the receipt of the pension has been suspended; or

## Code of January 1, 1913

An accident pension shall be replaced by the payment of a lump sum.

PAR. 2. The same is applicable to cases in which the accident insurance carrier is willing to grant treatment in a medical institution.

## ARTICLE 91

PARAGRAPH 1. The procedure for the determination as to which carrier of the accident insurance shall be required to pay compensation (art. 73, par. 2, of the industrial accident insurance law, art. 79, par. 2, of the accident insurance law for agriculture and forestry, and art. 78, par. 2, of the navigation accident insurance law), shall be regulated according to the Imperial Insurance Code, if the application for the decision of the Imperial Insurance Office (or the State insurance office) has been submitted after the date specified in article 85.

PAR. 2. The same rule shall be applicable in regard to the distribution of the cost of compensation among several carriers of the accident insurance (art. 85 of the industrial accident insurance law, art. 91 of the accident insurance law for agriculture and forestry, art. 37, par. 1, of the building accident insurance law, and art. 89 of the navigation accident insurance law).

## ARTICLE 92

Article 1608, paragraph 2, sentence 2 of the Imperial Insurance Code shall not be applicable, if the new procedure is regulated according to the Imperial Insurance Code; however, the earlier procedure is regulated according to the old provisions.

## ARTICLE 93

The provision of article 43, paragraph 2, of the accident insurance law for agriculture and forestry shall remain in force so long as disputes relating to agriculture and forestry are still to be settled by administrative procedure according to the old provisions after the date specified in article 85.

## ARTICLE 94

PARAGRAPH 1. If on the date specified in article 85 the lower administrative authority or the local pension office (*Rentenstelle*) has, in matters of the invalidity insurance, not yet given an opinion on an application for the granting, withdrawal, or suspension of benefits, then the matter shall be transferred to the local insurance office; the further procedure shall be regulated according to the Imperial Insurance Code.

PAR. 2. The same rule is applicable in cases of article 112, paragraph 3, of the invalidity insurance law, if the oral proceeding is to be taken up later.

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Code of January 1, 1913

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## ARTICLE 95

The procedure in the case of the refund of contributions (art. 42 to 44 of the invalidity insurance law) shall be regulated according to the provisions in force up to the present time; but, beginning with the date specified in article 85, the local insurance office shall take the place of the lower administrative authority or of the local pension office (*Rentenstelle*) or of the authority designated by the highest administrative authority (art. 128, par. 1 of the invalidity insurance law).

## ARTICLE 96

Against decisions which have become valid before the date specified in article 85, or have been handed down in a procedure according to the old provisions and have become valid after that date, the resumption of the procedure shall take place according to the Imperial Insurance Code.

## ARTICLE 97

For the settlement of matters pending to which the old provisions are to be applied, the superior insurance offices after their establishment shall take the place of the arbitration courts, and the newly formed senates of the Imperial Insurance Office (or State insurance office) that of the old senate.

## ARTICLE 98

The highest administrative authority shall specify on which date the superior insurance office shall select for the first time according to article 1686 of the Imperial Insurance Code from its district the physicians whom it wishes to call in as experts according to need. Up to this time, the physicians already elected shall also be called in as experts for those matters which are to be decided according to the Imperial Insurance Code.

## ARTICLE 99

Within the first five years after the date specified in article 85, the superior insurance office shall also transmit the case according to articles 1693 and 1799 of the Imperial Insurance Code to the Imperial Insurance Office (or State insurance office) for decision if it desires to dissent in matters of the sickness insurance from a decision of the Imperial Supreme Court (*Reichsgericht*) or of the highest administrative court of the federal State in which it has its seat.

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Code of January 1, 1913

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## VII. FINAL PROVISION

## ARTICLE 100

The Federal Council may decree still other transitory regulations. The regulations shall be published in the Reichs-Gesetzblatt and be presented to the Reichstag at its next session for its information.

## SECTION B

## ARTICLE 101

PARAGRAPH 1. On the date specified in article 4, the following shall be abrogated: Number 5 of article 4, paragraph 1, of the law on industrial courts (Reichs-Gesetzblatt, 1901, p. 353) and number 5 of article 5, of the law relating to commercial courts (Reichs-Gesetzblatt, 1904, p. 266).

PAR. 2. Disputes which have become pending before this date shall be settled by the authorities which have been competent up to the present time.

## ARTICLE 102

On the date specified in article 4, article 90 of the Industrial Code shall be abrogated.

## ARTICLE 103

On the date specified in article 4, the following articles of the Industrial Code shall take the forms specified below:

Article 62, paragraph 2.

Articles 81a, 81b, and article 95, paragraph 4.

Article 98, paragraph 3.

Article 1001, 100m, and 100n, paragraph 1.

## Article 62, Paragraph 2

The permission shall be refused in so far as one of the conditions designated in article 57 is applicable to them, or if the sick-fund contributions required by the Imperial Insurance Code have not been paid for them or no respite has been granted for the payment; in addition, it may only be refused, in so far as one of the conditions designated in articles 57a and 57b is present. The permission shall be revoked according to the provisions of article 58 by one of the authorities competent for the granting of it.

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Code of January 1, 1913

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## Article 81a

The purpose of the guilds shall be—

1. The cultivation of the spirit of mutual regard as well as a maintenance and development of professional ethics among the members of the guild.
2. The promotion of cordial relations between masters and journeymen (helpers) as well as provision for journeymen's lodging houses and employment bureaus.
3. The detailed regulation of the apprenticeship system and the provision for the technical, industrial, and ethical education of the apprentices, with reservation of articles 103e and 126 to 132a.
4. The settlement of disputes of the kind specified in article 4 of the law on industrial courts (Reichs-Gesetzblatt, 1901, p. 353) between members of the guild and their apprentices.

## Article 81b

PARAGRAPH 1. The guilds are authorized to extend their activities to other common industrial interests of the members of the guild. In addition to the establishment of guild sick funds, they are specially authorized—

1. To take measures for the promotion of the industrial, technical, and ethical education of the masters, journeymen (helpers), and apprentices, especially to assist, establish, and direct schools as well as to issue provisions for the utilization and attendance of the schools established by them.
2. To hold examinations for masters and journeymen, and to issue certificates based on the examinations.
3. To establish funds for the relief of their members and their relatives, their journeymen (helpers) and workmen in case of sickness, death, disablement, or other need.
4. To establish arbitration courts, which, in the place of the otherwise competent authorities, are to settle disputes of the kind designated in article 4 of the law on industrial courts between the members of the guild and their journeymen (helpers) and laborers.
5. To establish mutual enterprises for the promotion of the business of the members of the guild.

PAR. 2. The establishment and the legal status of sick funds shall be regulated according to the Imperial Insurance Code.

## Article 95, Paragraph 4

The execution of decisions of the guild meeting on matters specified in

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Code of January 1, 1913

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paragraph 2 must have the approval of the journeymen's committee. If the approval is refused, then the supervisory authority may supplement the same. The participation of the journeymen's committee in the affairs of the guild sick funds shall be regulated according to the Imperial Insurance Code.

#### Article 98, Paragraph 3

If other relief funds have been combined with the guild as guild sick funds, then the superior administrative authority may, after the dissolution or closing of the guild, grant them corporation rights; in this case the funds retain their assets.

#### ARTICLE 100I

If other funds for the relief of sickness have been united as guild sick funds with a guild which has been closed on account of the establishment of a compulsory guild, then articles 98 and 98a shall be applicable. With the approval of the representation of the relief fund, the compulsory guild may take this fund over with all its rights and obligations, in so far as statutory provisions of the State law do not forbid such action. In the latter case the existing members of this fund are entitled to belong to it even if they do not belong to the compulsory guild.

#### Article 100m

If members withdraw from a guild because of the establishment of a compulsory guild from an existing guild, with which another relief fund was united as a guild sick fund (art. 100b, par. 5,) then they may continue to belong to this fund.

#### Article 100n, Paragraph 1

Members of guilds shall not be obliged, against their will, to participate in other relief funds as guild sick funds.

#### Article 104

In so far as laws and other legal rules refer to provisions which the Imperial Insurance Code or which this law takes over, amends, or abrogates, the corresponding provisions of the Imperial Insurance Code or of this law shall take the place thereof.





# INDEX

## A

	PAGE
ABOLITION OF DEFENSES.....	69
Arizona.....	71
California.....	74
Connecticut.....	78
Illinois.....	79
Iowa.....	81
Kansas.....	82
Kentucky.....	1052 n
Maryland.....	86
Massachusetts.....	87
Michigan.....	88
Minnesota.....	89
Nebraska.....	91
Nevada.....	92
New Hampshire.....	93
New Jersey.....	94
New York.....	96
Ohio.....	97
Oregon.....	98
Rhode Island.....	99
Texas.....	100
Washington.....	101
West Virginia.....	102
Wisconsin.....	103
—see title of each State	
ABSCCESS; injury arising out of employment.....	352
ACCELERATION OR AGGRAVATION OF PRE-EXISTING	
DISEASE; injury arising out of employment.....	385
basis of compensation.....	674
ACCIDENT; definition of.....	350
definition of by House of Lords.....	349
—see <i>Accidental Injury</i>	
ACCIDENTAL INJURY; abscess.....	35
acceleration or aggravation of pre-existing disease.....	385

ACCIDENTAL INJURY— <i>Continued</i>	PAGE
anthrax . . . . .	358
apoplexy . . . . .	363
artificial leg; breaking thereof . . . . .	397
assault by drunken co-employé; Massachusetts rule (see also <i>Assault and Arising out of Employment</i> ) . . . . .	399
"beat hand" or "beat knee" miner's disease . . . . .	351
"bends" . . . . .	346, 351
blister on finger; red-lead poisoning . . . . .	356
blood poisoning . . . . .	354, 355
call of nature; happening while attending . . . . .	451
coal gas; inhalation of causing paralysis . . . . .	371
contagious and infectious diseases . . . . .	358
contributing cause of disability consisting of illness which makes the disability more serious . . . . .	391
copper poisoning . . . . .	374
death not natural or probable consequence of injury . . . . .	398
disability made more serious by illness or other contributing cause . . . . .	391
disease contracted in hospital after accidental injury . . . . .	397
diseases due to traumatism without direct external infection . .	359
distinction between word "injury" and term "accidental injury" as used in compensation laws . . . . .	334, 339
drowning . . . . .	380
eczema . . . . .	355, 358
enteritis caused by inhalation of sewer gas . . . . .	370
erysipelas from old injury . . . . .	355
exposure causing pneumonia . . . . .	371
fits and vertigo and falls caused thereby . . . . .	360
freezing . . . . .	375
frost bite . . . . .	375
gases, noxious; injury from . . . . .	370
germ or poison entering break in skin . . . . .	352
glanders . . . . .	358
gradual wearing from constant use of particular member . . . .	351
heart disease . . . . .	363
heatstroke . . . . .	375
hernia . . . . .	366
infections and other ailments contracted by reason of lowered vitality due to previous injuries . . . . .	392
injuries which are the basis of a claim for compensation and when they arise out of and in the course of the employ- ment . . . . .	331

**ACCIDENTAL INJURY—Continued**

	PAGE
insanity . . . . .	384
lead poisoning . . . . .	342, 373
lockjaw . . . . .	354
medical treatment; condition due to . . . . .	394
mental shock or fright and nervous troubles . . . . .	380
nervous troubles; mental shock or fright . . . . .	380
noxious gases; injury from . . . . .	370
optic neuritis . . . . .	370
overexertion . . . . .	349
paralysis from riding tricycle . . . . .	352
paralysis; inhalation of coal gas . . . . .	371
pneumonia caused by inhalation of noxious gases . . . . .	370
pneumonia; Federal act . . . . .	342
pneumonia following exposure or traumatism . . . . .	371
rupture . . . . .	349, 366
seamen and mechanics getting on and off vessels . . . . .	412
sewer gas; enteritis caused by inhalation of . . . . .	370
skin affections from acids and other irritants . . . . .	356
sprains; strains and ruptures . . . . .	366
suicide due to mental condition caused by accident . . . . .	385
sunstroke . . . . .	375
surgical operation; refusal of workman to permit operation to be performed . . . . .	396
term "accidental injury" does not include occupational dis- eases . . . . .	340
tetanus . . . . .	354
traumatism; causing pneumonia . . . . .	371
tuberculosis . . . . .	359
vaccination by order of superior . . . . .	397
what is an accidental injury and when does it arise out of the employment? . . . . .	339
— see <i>Arising Out of Employment</i> .	
<b>ACCEPTANCE OF COMPENSATION PRINCIPLE AS TO PART ONLY OF EMPLOYÉS . . . . .</b>	<b>210</b>
<b>ACIDS; skin affections from; injury arising out of employment</b>	<b>356</b>
<b>ACTING WITHOUT SCOPE OF AUTHORITY; volunteers; ac- cident arising out of employment . . . . .</b>	<b>456</b>
<b>ACTORS; application of compensation acts to . . . . .</b>	<b>120</b>
<b>ACTUARIAL PRINCIPLES UNDERLYING STATE INSUR- ANCE LAWS . . . . .</b>	<b>63</b>

	PAGE
ADMINISTRATION; necessity of administering on estate of workman.....	574
ADMINISTRATION AND PROCEDURE.....	790
admission in answer that compensation has been paid amounts to admission of claim made.....	804
agreement for compensation is a bar to arbitration.....	796
agreement to pay compensation is not a consent to submit to arbitration.....	796
amending pleadings by arbitrator.....	797
amending pleadings; discretion of administrative body.....	807 n
apportioning compensation among dependents.....	804
Arizona.....	806
award "during total or partial incapacity".....	797
award to terminate at a specified date in the future.....	804
California.....	806
claim for compensation; specifying amount when making claim for compensation.....	795
Connecticut.....	814
deceased employer; right of workman to take out letters of administration.....	795
effect of agreement to pay compensation "during incapacity" ..	797
enforcing payment of award; body execution.....	804
equity rules apply generally to proceedings to recover compensation.....	836 n
evidence; burden of proof as to serious and wilful misconduct...	800
evidence; burden of proving the injury was caused by accident is on the workman.....	797
evidence; inferences in the absence of direct proof.....	798
evidence; physician's certificates.....	801
evidence; statement made by employé in the absence of his employer as to his bodily or mental feelings.....	800
evidence; statement of a deceased workman to his physician as to the cause of accident.....	801
evidence; statement of deceased employé against interest of dependents.....	801
finding; sufficiency of finding of incapacity.....	801
finding; question of fact as to which there is any evidence to support.....	802
guardian ad litem; when appointment of necessary.....	795
Illinois.....	815
Iowa.....	834

Volume 2 begins at page 1053

ADMINISTRATION AND PROCEDURE— <i>Continued</i>		PAGE
jury trial; abolition of . . . . .		791
Kansas . . . . .		835
liberal rules as to procedure . . . . .		795
Maryland . . . . .		836
Massachusetts . . . . .		836
Michigan . . . . .		842
Minnesota . . . . .		836
Nebraska . . . . .		863
Nevada . . . . .		863
New Hampshire . . . . .		867
New Jersey . . . . .		867
New Jersey; defect in statute . . . . .		794
new trial; arbitrator cannot grant . . . . .		805
New York . . . . .		873
New York statute; discussion relating to . . . . .		792
offset of overpayment of compensation . . . . .		805
Ohio . . . . .		874
Oregon . . . . .		878
recall of judges; discussion relating to . . . . .		792
recovery; what amounts to as an election of remedies . . . . .		805
Rhode Island . . . . .		878
signing receipts by workman . . . . .		805
suspensory award . . . . .		804
Texas . . . . .		879
various methods of administration . . . . .		791
Washington . . . . .		881
West Virginia . . . . .		881
Wisconsin . . . . .		887
— See titles of various States; <i>Procedure</i> . . . . .		
ADMISSION; in answer that compensation has been paid amounts to admission that claim was made . . . . .		804
ADOPTED CHILD; when a dependent under the New Jersey Act . . . . .		619 n
AGGRAVATION OF PRE-EXISTING DISEASE; injury arising out of employment . . . . .		1385
ALBERTA . . . . .		1616
actions at law; dismissal; assessment of compensation . . . . .		1620
agreements as to compensation . . . . .		1631, 1632
agricultural employes; act does not apply to . . . . .		1626, 1627
alternative remedy; assessment of compensation after dismissal of action . . . . .		1620

---

 Volume 2 begins at page 1053
 

---

<b>ALBERTA—Continued</b>	<b>PAGE</b>
assignment of compensation claims . . . . .	1635
attorney's fees . . . . .	1639
"average weekly wages;" definition of . . . . .	1630, 1631
claim for compensation . . . . .	1621
commutation of compensation awards . . . . .	1634
contracting out . . . . .	1622
contractors and subcontractors; rights and liabilities of parties . . . . .	1623, 1624
costs; when allowed . . . . .	1639
death benefits . . . . .	1628, 1629
dependents; definition of . . . . .	1618
disability benefits . . . . .	1629, 1630
election of remedies after accident; wilful act of employer; effect . . . . .	1619
employer; definition of . . . . .	1618
engineering work; definition of . . . . .	1617
engineering work; limitation on meaning of . . . . .	1627
exemption of compensation of claims . . . . .	1635
factory; definition of . . . . .	1617
factory; limitation on meaning of . . . . .	1627
farm laborers; act does not apply to . . . . .	1626, 1627
fees of solicitor . . . . .	1639
fees; when to be charged . . . . .	1639
funeral benefits . . . . .	1629
incompetents; provisions relating to . . . . .	1632
insolvency of employer; rights and liabilities of parties . . . . .	1624, 1625
insurance of compensation claims; when workman can enforce claim against insurer . . . . .	1624, 1625
limitation; claim for compensation . . . . .	1621
limitation; notice of accident . . . . .	1621
lump sum payments; when allowed . . . . .	1635
medical attendance . . . . .	1629
medical examination . . . . .	1631
medical examination; regulations relating to . . . . .	1633
medical referee . . . . .	1636
medical referee when any matter submitted to . . . . .	1639
"member of family" . . . . .	1619
mine; definition of . . . . .	1617
mine; limitation on meaning of . . . . .	1627
modification of compensation agreements or awards . . . . .	1634
non-residents; regulations concerning payments to . . . . .	1635
notice of accident . . . . .	1621

<b>ALBERTA—Continued</b>	<b>PAGE</b>
outworker; definition of . . . . .	1619
payment of compensation; attorney general; authority to make orders in relation to . . . . .	1640
payments how and when made . . . . .	1631
physical examination . . . . .	1631
physical examination; regulations relating to . . . . .	1633
preference of compensation claims . . . . .	1625
procedure; arbitration . . . . .	1620
procedure; arbitration; regulations concerning . . . . .	1635, 1636
procedure; court in which proceedings taken . . . . .	1628
procedure; how compensation claims determined . . . . .	1632, 1633
procedure; rules of court as to service of documents . . . . .	1634
quarry; definition of . . . . .	1617
quarry; limitation on meaning of . . . . .	1627
railway; definition of . . . . .	1617
recording memorandums of agreement relating to compensa- tion . . . . .	1637
rules of court; authorization concerning . . . . .	1639
serious and wilful misconduct of workman; effect on right to compensation . . . . .	1620
service of notice of accident and claim for compensation . . . . .	1622
solicitor's fees . . . . .	1639
text of compensation act . . . . .	1616
third party causing injury; rights and liabilities of parties . . . . .	1626
to whom act applies . . . . .	1616
undertaker; definition of . . . . .	1617
wages which are basis of compensation . . . . .	1630, 1631
waiting period . . . . .	1629
waiver of right to compensation . . . . .	1626
workman; definition of . . . . .	1618
<b>ALIENS; treaties as affecting rights of aliens as dependents . . . . .</b>	<b>582</b>
when dependents . . . . .	582
<b>ALTERNATIVE SCHEME; see Contracting Out . . . . .</b>	<b>1646, 1647</b>
<b>AMERICAN COMPENSATION ACTS; review of acts thus far passed . . . . .</b>	<b>21</b>
<b>ANIMAL; bite of; injury arising out of employment . . . . .</b>	<b>512</b>
<b>ANTHRAX; injury arising out of employment . . . . .</b>	<b>358</b>
<b>APOPLEXY; injury arising out of employment . . . . .</b>	<b>363</b>
<b>APPEALS . . . . .</b>	<b>895</b>
Arizona . . . . .	895



APPEALS— <i>Continued</i>	PAGE
California . . . . .	895
Connecticut . . . . .	895
costs; award of . . . . .	895
dependent upon statute . . . . .	892
determining adequacy of lump sum payment under agree- ment . . . . .	894
dismissal of action and making decision in arbitration proceed- ings . . . . .	894
Illinois . . . . .	896
Iowa . . . . .	896
Kansas . . . . .	897
Kentucky; review of decisions of Workmen's Compensation Board . . . . .	1052 v
Maryland . . . . .	897
Massachusetts . . . . .	897
Michigan . . . . .	897
Minnesota . . . . .	898
Nebraska . . . . .	898
Nevada . . . . .	898
New Hampshire . . . . .	898
New Jersey . . . . .	898
New York . . . . .	898
Ohio . . . . .	899
order terminating weekly payments not appealed from is final . . . . .	894
Oregon . . . . .	899
points raised below only considered . . . . .	893
reviewing facts . . . . .	893
Rhode Island . . . . .	899
Texas . . . . .	899
Washington . . . . .	900
West Virginia . . . . .	900
Wisconsin . . . . .	900
—see titles of various States	
APPENDICITIS; injury caused by falling downstairs . . . . .	670
APPLYING FOR WORK; injury arising out of employment when accident occurs while applying for work . . . . .	438
APPORTIONING COMPENSATION AMONG DEPEND- ENTS . . . . .	804
occupational diseases contracted partly in the employment of two employers . . . . .	649

	PAGE
APPRENTICE; serving without pay; application of Compensation Act. ....	117
ARBITRATOR; cannot grant new trial. ....	805
ARISING OUT OF EMPLOYMENT; abscess; when accidental injury. ....	352
acceleration or aggravation of pre-existing disease. ....	385
accident; definition of. ....	349, 350
acting on an emergency. ....	501
anthrax. ....	358
apoplexy. ....	363
Arizona; provision of statute. ....	518
assault by a drunken co-employé; Massachusetts rule. ....	399
assaults; injuries caused by third person. ....	505
"beat hand" as accidental injury. ....	351
"beat knee" as accidental injury. ....	351
"bends" as accidental injury. ....	346, 351
bite of animal. ....	512
bite of mad dog. ....	513
bite of rattlesnake. ....	514
blister infected with red lead. ....	356
blood poisoning. ....	355
blood poisoning from abscess. ....	354
blood poisoning from cut at home. ....	356
blood poisoning from tight boot. ....	356
brakeman going to caboose in freight yards to get his clothes. ....	436
breaking artificial leg. ....	397
bridge builder being transported to and from place of employment. ....	409
California; provision of statute. ....	519
call of nature; happening of accident while attending. ....	451
club servant climbing in window at midnight after being away for his own purposes. ....	436
coal gas; inhalation of; paralysis. ....	371
collier alighting from train furnished by employer to carry workman. ....	407
condition due to medical treatment. ....	394
Connecticut; provision of statute. ....	519
construction of Massachusetts Industrial Accident Board as to meaning of term "personal injury". ....	346

ARISING OUT OF EMPLOYMENT— <i>Continued</i>	PAGE
construction of term "arising out of and in the course of employment" under New Jersey Act. . . . .	349
copper poisoning. . . . .	374
corporation employé loaned to officer of corporation. . . . .	456
crossing tracks of railroad company belonging to employer to reach place of employment. . . . .	426
death not natural or probable consequence of injury. . . . .	398
disability made more serious by illness or other contributing cause. . . . .	391
disease contracted in hospital after accidental injury. . . . .	397
diseases due to traumatism but without direct external infection or contagion. . . . .	359
disobedience of specific orders. . . . .	493
distinction between terms "arising out of" and "in course of" employment. . . . .	398
distinction between statutes where word "injury" alone is used instead of words "accidental injury". . . . .	334
distinction between word "injury" and term "accidental injury" as regards accidents arising out of employment. . . . .	339
drawing inferences from unexplained injuries. . . . .	516
driver of delivery wagon bitten by dog while opening door in high fence. . . . .	513
driving from place of work to shop; workman thrown out of wagon. . . . .	412
drowning. . . . .	380
eczema from aggravation of skin by salt water. . . . .	358
eczema from injured elbow. . . . .	355
employé on public road leading to place of employment. . . . .	405
employé on way to hotel from a labor train. . . . .	405
engine driver on employer's premises an hour and a quarter before it was necessary for him to be there. . . . .	435
engine hostler injured while on engine going to place where he was to work. . . . .	428
engineer killed while on his way to take charge of his engine. . . . .	436
enteritis caused by inhalation of sewer gas. . . . .	370
erysipelas from old injury. . . . .	355
eyes injured by electric light; construction of Federal Act. . . . .	345
farm employé traveling between farms on his own bicycle; upset by his own dog getting in the way. . . . .	399
farmer returning home temporarily during the storm injured by crossing a plank over a dyke. . . . .	427

ARISING OUT OF EMPLOYMENT— <i>Continued</i>	PAGE
fireman in service of railway company riding home on one of defendant's trains.....	409
fireman of industrial plant going to place where he was not re- quired to be; Wisconsin Act.....	636 n
fireman on board ship going ashore for his own purposes and injured while returning to ship.....	402
fireman on employer's premises in going to place of work....	428
fireman struck by train in the railroad yard.....	411
foreign substance in eye.....	514
foreman on public highway struck by rock thrown by blast on master's premises.....	412
freight conductor injured while occupying caboose where he was required to be to answer call.....	432
frost bite.....	375
fruit picker on piece work going from one part of farm to another.....	427
germ or poison entering system through break in skin.....	352
getting drink of water.....	450
glanders.....	358
going to and from place of employment.....	338, 404
going to portions of employer's premises other than those nec- essarily used by the workman for his own convenience or pleasure.....	475
government employé climbing over train of cars to reach place of employment.....	425
government employé on way to work slipping and falling while on government property, but before reaching place of work.....	425
government employé stumbling against a piece of iron after finishing work, but before leaving employer's premises..	421
gradual weakening, wearing out or breaking down of employé..	343
heart disease;.....	363
heatstroke;.....	375
hernia.....	366
Illinois; provision of statute.....	520
infections and other ailments contracted by reason of lowered vitality due to previous injuries.....	392
infectious and contagious diseases.....	358
inflammation of kidneys from wading in water; accidental injury.....	350
injuries at mealtime.....	444
injuries by third person.....	338

ARISING OUT OF EMPLOYMENT— <i>Continued</i>	PAGE
injuries due to gradual wearing or constant use of particular members. . . . .	351
injuries from falls caused by fits; vertigo or other like causes. . . .	360
injuries which are the basis of a claim for compensation and when they arise out of and in the course of the employment. . . .	331
injuries without external manifestation. . . . .	350
insanity. . . . .	384
Iowa; provision of statute. . . . .	520
Kansas; provision of statute. . . . .	520
laborer loading and unloading wagons; riding on wagons from one place to another. . . . .	410
laborer walking on tracks owned by employer. . . . .	429
lead fumes producing toxic amblyopia; injury arising out of employment. . . . .	344
lead poisoning. . . . .	373
lead poisoning; Federal Act. . . . .	342
lightning striking workman. . . . .	515
loading and unloading van; workman injured while traveling from place of loading to place of unloading; two separate employments. . . . .	407
lockjaw; when accidental injury. . . . .	354
Maryland; provision of statute. . . . .	521
Massachusetts; provision of statute. . . . .	521
mental shock or fright and nervous troubles. . . . .	380
messenger fainting on street on hot day. . . . .	456
Michigan; provision of statute. . . . .	521
miner becoming sick going to open air and injured while on the way. . . . .	431
miner getting out at the wrong level. . . . .	426
miner going by unusual route from employer's premises. . . . .	434
miner injured by gate swinging back on him on master's premises before reaching the actual place of employment. . . .	426
miner on employer's land but not near the place where he was to work. . . . .	435
Minnesota; provision of statute. . . . .	522
motorman injured while riding to work on a car which was used for transportation of mail. . . . .	428
Nebraska; provision of statute. . . . .	522
Nevada; provision of statute. . . . .	523
New Hampshire; provision of statute. . . . .	523
New Jersey; provision of statute. . . . .	523
New Jersey rule. . . . .	402

## Volume 2 begins at page 1053

ARISING OUT OF EMPLOYMENT—*Continued*

	PAGE
New York; provision of statute.....	524
night foreman on public street going to his duties.....	406
noxious gases; injury arising out of employment.....	370
Ohio; driver caring for horse at his own home after keeping him there over Sunday.....	452
Ohio; provision of statute.....	524
optic neuritis caused by noxious gases.....	370
Oregon; provision of statute.....	524
over-exertion as accidental injury.....	349
paralysis due to inhalation of coal gas.....	371
paralysis from riding tricycle.....	352
playing practical jokes.....	511
pneumonia caused by inhalation of noxious gases.....	370
pneumonia due to exposure as an accidental injury.....	342
pneumonia following exposure or traumatism.....	371
pumper riding on employer's trains in going to the place where he was to work.....	428
railroad company; workman riding on engine between stations..	429
railroad employé waiting to be called crossing tracks from railroad club house.....	432
railroad hand on employer's premises before work begins.....	432
railroad transporting employés to and from place of employ- ment on handcar.....	412
railway overseer returning to his office by a short cut.....	399
rear brakeman of freight train preparing supplies on caboose before actually beginning to work.....	429
red lead poisoning from blister on finger.....	356
refusal of workman to permit operation to be performed.....	396
returning to employer's premises to secure pay.....	438
returning to employer's premises to secure tools.....	440
Rhode Island; provision of statute.....	525
riding on footboard of train contrary to orders.....	410
ringing out on time clock after close of work; injury from slipping and falling by reason of other employés pushing.....	422
rupture as accidental injury.....	349
sailor washing clothes in a dark alley falling down hatchway....	421
saving life of another.....	505
seamen and the mechanics getting on and off vessels.....	412
seaman injured by explosion of gun.....	515
section hand assisting regular crew doing work not in direct line of his duty.....	412
serious and wilful misconduct; intoxication.....	480, 636 n

ARISING OUT OF EMPLOYMENT— <i>Continued</i>	PAGE
serious and wilful misconduct; obligation to family of workman	334
significance of terms employed.....	333
shepherd on his way to place of employment in wagon furnished by employer.....	407
skin affections from acids and other irritants.....	356
sprains, strains and ruptures.....	366
sting of insect.....	514
street railway company employé riding on motor car.....	401
suicide due to mental condition caused by accident.....	385
sunstroke.....	375
tetanus; accidental injury.....	354
Texas; provision of statute.....	525
transferring workman to and from place of employment....	408
transporting workman to and from place of employment; workman pushed off platform of train and killed.....	409
traveling on a return railway ticket gratuitously furnished by employer.....	407
tuberculosis.....	359
tuberculosis developing from traumatism.....	346
unnecessarily going to place of danger.....	440
vaccination by order of superior.....	397
volunteers acting without scope of authority.....	456
walking on railroad tracks near place of employment.....	411
Washington; provision of statute.....	526
watchman alighting from labor train.....	411
watchman on trawler falling into water after returning from place to which he had gone for refreshments.....	427
West Virginia; provision of statute.....	526
what is an "injury" or an "accidental injury"?.....	339
wilful misconduct; engineer going to a dangerous place by direction of chief engineer; Wisconsin.....	480, 636 n
Wisconsin; provision of statute.....	526
woman about to leave for home because of illness; hair caught in machinery while combing same.....	421
working after regular hours of employment.....	437
workman acting on unauthorized orders.....	500
workman becoming cold going to factory building to warm himself injured while on the way.....	431
workman changing clothes preparatory to going home after finishing day's work;.....	420
workman depositing work ticket on master's premises before time to begin work.....	427

Volume 2 begins at page 1053

ARISING OUT OF EMPLOYMENT— <i>Continued</i>	PAGE
workman directed to go to branch station, goes to general postoffice half a mile further away, slips on a banana skin.....	456
workman entering premises to apply for work.....	438
workman going from one floor to another of employer's premises.....	427
workman going from one portion of plant to another stopping to converse with fellow employé.....	430
workman going from warehouse to office in automobile to learn whether employment required at night, injured on way..	455
workman going to dinner jumping on train of cars against rules of the company.....	434
workman going to other part of employer's premises for his own convenience or pleasure, not on employer's duty....	435
workman injured after suspension, but while still on master's premises.....	424
workman injured during temporary cessation of work.....	430
workman injured on elevator furnished by employer to transport employés to upper story of building.....	426
workman injured on employer's premises before work begins, after work ceases, or during cessation of work.....	419
workman injured on master's premises when departing on his private business.....	424
workman injured while crossing tracks on employer's premises in departing over usual course.....	424
workman injured while occupying sleeping and living quarters provided by master.....	431
workman killed by burning of employer's premises.....	437
workman leaving employer's premises by a short cut which had never before been used.....	421
workman on employer's premises going home but some distance from place of work.....	433
workman on public highway.....	406
workman removing socks on account of wet floor; strained tendon of finger.....	436
workman running to time clock after whistle blew, slipping and falling.....	422
workman seeking ingress and egress from place of employment..	423
workmen taking turns in attending to machine; workman injured while resting.....	430
workman washing overalls and jumper after finishing day's work; when injured.....	420



---

 Volume 2 begins at page 1053
 

---

ARISING OUT OF EMPLOYMENT— <i>Continued</i>	PAGE
workman whose duties take him away from the employer's premises . . . . .	452
yard brakeman riding on passenger engine . . . . .	409
ARIZONA; abolition of defenses . . . . .	71
Act of 1913; a continuation of former Act . . . . .	1068
administration and procedure . . . . .	806
appeals . . . . .	895
arising out of employment; provision of statute . . . . .	518
assignment of compensation claims . . . . .	1068
attorney's fees; fixed by court . . . . .	1067
burial expenses paid out of compensation . . . . .	1063
common law doctrine of no liability when abrogated . . . . .	1060
commutation of claims and awards . . . . .	951
compromising compensation claims . . . . .	945
contractors and subcontractors; liability to employes of . . . . .	532
contracts in lieu of compensation . . . . .	1069
death benefits . . . . .	587, 1061
dependents . . . . .	587
dependents; apportioning compensation payments between . . . . .	1067
disability benefits . . . . .	687, 1061
election of remedies . . . . .	305, 1059, 1060, 1069
election to accept compensation principle by those to whom the Act does not apply . . . . .	1069
Employers' Liability Act . . . . .	1054
Employers' Liability Act; appeals; interest allowed where appeal unsuccessful . . . . .	1057
Employers' Liability Act; contracts relieving employer from liability prohibited . . . . .	1057
Employers' Liability Act; death; actions for when maintainable . . . . .	1056
Employers' Liability Act; defenses abolished . . . . .	1056
Employers' Liability Act; safety rules required . . . . .	1056
exemption of compensation claims . . . . .	1068
funeral expenses . . . . .	559
incompetents; protecting rights of in compensation matters . . . . .	1068
insuring compensation . . . . .	962
limits of amount of compensation payments . . . . .	1062
lump sum payments of compensation; award . . . . .	1066
manner of bringing employers and employes under Act . . . . .	211
medical attention . . . . .	549
medical attention paid out of compensation . . . . .	1063
medical examination . . . . .	928, 1063
modifying awards . . . . .	921

<b>ARIZONA—Continued</b>	PAGE
notices of injuries and of claims for compensation.....	769, 1065
physical examination.....	928, 1063
preference of compensation claims.....	1068
procedure in settling compensation claims.....	1065
remedial nature of Act.....	1070
repealing Act.....	1070
reports of injuries by employers.....	934
texts of Compensation Act.....	1053
to whom Compensation Act applies.....	146, 1058
to whom Employers' Liability Act applies.....	1054, 5
wages which are the basis of compensation.....	746, 1062
waiting period.....	543, 1060
Workmen's Compensation Act proper; texts of.....	1058
<b>ARTIFICIAL LEG; breaking; injury arising out of employment</b>	397
<b>ASSAULT; accidental injury arising out of employment; assault</b>	
by drunken co-employé; Massachusetts rule.....	399
injuries caused by third persons; arising out of employment....	505
<b>ASSIGNMENT OF COMPENSATION CLAIMS.</b> See title of each State.	
<b>ASSISTANT; employment of by another workman; application of</b>	
compensation Act.....	115
employment of by conductor on railroad; emergency.....	117
<b>ASSUMPTION OF RISK; defense of; power to abolish.....</b>	18
origin of as defense.....	3
<b>ATTORNEY'S FEES; general remarks concerning.</b> See title of each State.	
<b>AWARD; suspensory.....</b>	804
to terminate at a specified date in the future.....	804

**B**

<b>BANK HOLIDAYS; intermittent employment due to; wages</b>	
which are basis of compensation.....	741
<b>"BEAT HAND"; accidental injury.....</b>	351
<b>"BEAT KNEE"; accidental injury.....</b>	351
<b>"BENDS"; accidental injury arising out of employment.....</b>	346, 351
<b>BITE OF ANIMAL; injury arising out of employment.....</b>	512
<b>BITE OF RATTLESNAKE; injury arising out of employment</b>	514
<b>BLISTER; lead poisoning from blister on finger; injury arising</b>	
out of employment.....	356

	PAGE
BLOOD POISONING; finger cut at home; injury arising out of employment.....	356
from blood abscess; injury arising out of employment.....	354
injury arising out of employment.....	355
tight boot; injury arising out of employment.....	356
BOARDING MISTRESS OF CONSTRUCTION CREW; application of Compensation Act.....	118
BREAKING ARTIFICIAL LEG; injury arising out of employment.....	397
BRINGING EMPLOYER AND EMPLOYÉ UNDER ACT. <i>See Manner of Bringing Employer and Employé under Act.</i>	
BRITISH COLUMBIA.....	1641
arbitration; provisions relating to.....	1652
assignment of compensation claim.....	1652
attorney's fee.....	1653
bankruptcy of employer; rights of parties.....	1648
commutation of compensation payments.....	1651
contracting out.....	1646, 1647
contractors and subcontractors; rights and liabilities of parties.....	1647, 1648
costs; when and how taxed.....	1653
death benefits.....	1649, 1650
dependents; amount to be paid to each; how determined.....	1651
dependents; definition of.....	1642
disability benefits.....	1650
election of remedies after accident; wilful act of employer.....	1644
election of remedy after accident; demand for assessment of compensation after failure in action for damages.....	1644, 1645
employer; definition of.....	1642
engineering work; definition of.....	1642
exemption of compensation claim.....	1652
factory; definition of.....	1641
fees of solicitors or attorneys.....	1653
fees; when and how allowed.....	1653
funeral benefits.....	1650
insolvency of employer; rights of parties.....	1648
insurance of compensation claims; rights of workmen when employer becomes insolvent.....	1648
limitation; notice of accident.....	1645, 1646
lump sum payments.....	1651
medical attendance.....	1650

Volume 2 begins at page 1053

BRITISH COLUMBIA— <i>Continued</i>	PAGE
medical examination . . . . .	1650, 1651
medical referee . . . . .	1654
military; persons in service of; act does not apply to . . . . .	1643
mine; definition of . . . . .	1641
modification of compensation awards . . . . .	1651
navy; persons in service of; act does not apply to . . . . .	1643
notice of accident . . . . .	1645, 1646
payments of compensation claims; to whom and how made . . . . .	1650
penalties under mining act not affected by compensation statute . . . . .	1645
physical examination . . . . .	1650, 1651
procedure . . . . .	1644
procedure; arbitration; provisions relating to . . . . .	1652
procedure; regulations by Lieut. Gov. . . . .	1649
quarry; definition of . . . . .	1642
railway; definition of . . . . .	1641
registration of arbitration award . . . . .	1653
serious and wilful misconduct; effect of on claim for compensa- tion . . . . .	1644
service of notice of accident . . . . .	1646
shipbuilding yard; workman employed in; when entitled to compensation . . . . .	1643
solicitor's fee . . . . .	1653
text of compensation act . . . . .	1641
third parties causing injury; rights and liabilities of parties . . . . .	1648, 1649
to whom act applies . . . . .	1641
undertaker; definition of . . . . .	1642
undertakers; when act applies to . . . . .	1643
waiting period . . . . .	1643
wilful act of employer; election of remedy after accident . . . . .	1644
workman; definition of . . . . .	1642
 BRITISH COMPENSATION ACT . . . . .	 1735
agreement as to compensation claim . . . . .	1736
agreement waiving provisions of act . . . . .	1748
alternative scheme . . . . .	1737, 1738
appeals . . . . .	1758, 1759
arbitration of compensation claim . . . . .	1736
arbitrations; procedure relating to . . . . .	1755, et seq.
arbitrators; fees of . . . . .	1745
assignment of compensation claims . . . . .	1754
average weekly earnings; definition of . . . . .	1750

BRITISH COMPENSATION ACT— <i>Continued</i>		PAGE
bankruptcy of employer; rights of workman against insurer . .	1739	
commutation of compensation claims . . . . .	1754	
contracting out . . . . .	1737, 1738	
contractors and subcontractors; rights and liabilities of parties . . . . .	1738	
costs . . . . .	1758	
County Judge; definition . . . . .	1747	
death benefits . . . . .	1749	
decision of court . . . . .	1757	
dependent children; neglect of by widow; procedure in relation to . . . . .	1752	
dependent; definition of . . . . .	1747	
dependent; who is; when determined by arbitration . . . . .	1751	
disability benefits . . . . .	1750	
diseases; occupational; regulations relating to . . . . .	1742	
diseases; occupational; specifications of . . . . .	1759, 1760	
earnings; definition of . . . . .	1750	
election of remedy after accident; right to demand damages or claim compensation; wilful act of employer . . . . .	1735	
employer; definition of . . . . .	1746	
exemption of compensation claims . . . . .	1754	
fees and lien of solicitor . . . . .	1758	
fees of arbitrators . . . . .	1745	
fees of medical referees . . . . .	1745	
general description of . . . . .	7	
insolvency of employer; rights of workman against insurer . .	1739	
insurance of compensation claims; rights of workmen when employer becomes bankrupt . . . . .	1739	
investment of compensation claims paid into court . . . . .	1751	
investment of compensation money in postoffice savings bank	1752	
Ireland; courts having jurisdiction . . . . .	1759	
Ireland; investment of compensation moneys . . . . .	1754	
limitations; notice of accident and claim for compensation . .	1736	
lump sum payment . . . . .	1754	
lump sum payment; recording agreement in relation to . . . .	1757	
"manager", in relation to a ship; definition of . . . . .	1747	
mariners; when act applies to . . . . .	1740	
medical examination . . . . .	1751, 1752	
medical referees; provisions relating to . . . . .	1745, 1753	
medical referee; when matter submitted to . . . . .	1758	
member of family; definition of . . . . .	1747	
Merchant Shipping Act; effect of on compensation claims . . .	1741	

## Volume 2 begins at page 1053

BRITISH COMPENSATION ACT— <i>Continued</i>		PAGE
modification of compensation awards.....		1753
non-resident; beneficiaries; provisions relating to.....		1754
notice of accident and claim for compensation.....		1736
notice of accident and claim for compensation service.....		1737
notice of injury; how to be given by mariners.....		1740, 1741
notices of injury and of claims for compensation; decisions under British statute.....		767
occupational diseases; regulations relating to.....		1742
occupational diseases; specification of.....		1759, 1760
officers who have charge of administration of compensation act; specification of.....		1748
outworker; definition of.....		1747
payment of compensation claims; when and how made.....		1751
penalties; fines; effect of on compensation claims.....		1736
physical examination.....		1751, 1752
police force; definition of.....		1747
port; definition of.....		1747
postoffice savings bank; investment of compensation money.....		1752
procedure; arbitration provisions relating to.....		1755 et seq.
recording agreement in relation to lump sum payments.....		1757
recording memorandum of agreement or awards.....		1756
recording of agreement as to compensation; when record may be refused.....		942, 943
redemption by lump sum payment of compensation claim.....		1754
registering agreements as to compensation.....		941, 942
reports of injuries and payments of compensation claims by employers.....		1746
review of weekly payments.....		1753
Scotland; courts having jurisdiction of compensation controversies.....		1758
Scotland; jurisdiction of courts.....		1748
seaman; definition of.....		1747
serious and wilful misconduct.....		7
serious and wilful misconduct; effect of on compensation claim.....		1736
service of notice of injury and claim for compensation.....		1737
shareworkers; mariners; vessels; application of acts to.....		1742
ship; definition of.....		1747
shipping; non-resident owners; detention of ship.....		1745, 1746
solicitor; fees and lien of.....		1758
text of.....		1735
third person causing injury; rights and liabilities of employer.....		1740

BRITISH COMPENSATION ACT— <i>Continued</i>	PAGE
to whom act applies; persons in Naval and Military service	
not under provisions of . . . . .	1745
undertakers; rights and liabilities of parties . . . . .	1737
vessel; definition of . . . . .	1747
wages which are the basis of compensation . . . . .	1750
waiting period . . . . .	1735, 1750
waiving provisions of act . . . . .	1748
when act became effective . . . . .	1748
workman; definition of . . . . .	1747
 BRITISH NATIONAL INSURANCE ACT . . . . .	 1763
accounts; valuations; surplus and deficits . . . . .	1791
administration of benefits . . . . .	1776
administration of maternity benefits . . . . .	1782
administration of medical benefits . . . . .	1777
administration of sanatoria benefits . . . . .	1781
age limit as to compulsory insurance . . . . .	1746
aliens; special provisions as to . . . . .	1803
application of Acts of Parliament to approved societies and	
sections . . . . .	1836
appointment of umpire, insurance officers, inspectors, etc. . .	1854
approved societies; accounts, valuations, surplus and deficits .	1791
approved societies; application of Acts of Parliament to . . . .	1836
approved societies; conditions for the approval of . . . . .	1784
approved societies; deficits . . . . .	1791–3
approved societies; general provisions as to . . . . .	1787
approved societies; membership of approved societies and	
transfer of members . . . . .	1789
approved societies; pooling arrangements in case of small so-	
cieties . . . . .	1796
approved societies; power of societies to undertake business	
under Part I of act . . . . .	1785
approved societies; provisions as to minors who are members	
of . . . . .	1836
approved societies; provisions relating to . . . . .	1784
approved societies; special provisions for employers; provident	
fund . . . . .	1786
approved societies; special provisions with regard to society	
with branches . . . . .	1797
approved societies; secessions . . . . .	1788
approved societies; surplus and deficits . . . . .	1791
approved societies; withdrawal of approval . . . . .	1788

BRITISH NATIONAL INSURANCE ACT— <i>Continued</i>	PAGE
assignment of claims . . . . .	1869
benefits; health insurance . . . . .	1878
benefits; schedule of . . . . .	1768
birth certificates; provisions relating to . . . . .	1870
“branch”; definition of . . . . .	1837
certified teachers; special provisions as to . . . . .	1817
change from voluntary rate to employed rate and vice versa . .	1766
civil proceedings against employer for neglecting to pay con- tributions . . . . .	1833
commissioners; joint committee of . . . . .	1850
contributions by insured persons, employers and the treasury	1765
contributions; civil proceedings against employer when neg- lecting to pay . . . . .	1833
“County”; definition of . . . . .	1838
Crown; persons in service of; application to other persons than those specified . . . . .	1817
“dependents”; definition of . . . . .	1837
dependents; power to extend sanatoria benefits to . . . . .	1782
deposit insurance . . . . .	1798
deposit insurance; contributors . . . . .	1798
deposit insurance; transfer from approved society to deposit insurance and vice versa . . . . .	1799
determination of questions by insurance commissioners . . . .	1830
“disease or disablement;” definition of . . . . .	1837
disputes; procedure in case of . . . . .	1831
distress and execution; protection against in certain cases . . .	1832
double insurance; prohibition against . . . . .	1790
election of remedies; provision in case of contributors en- titled to compensation or damages . . . . .	1773
“employed contributor”; definition of . . . . .	1837
employed contributors; definition of . . . . .	1763
employment; what employments are covered . . . . .	1871
exceptions from operation of act . . . . .	1872
excessive sickness; inquiries into cause of . . . . .	1826
exemption of persons who are not required to insure . . . . .	1764
exemptions . . . . .	1832
factory and workshop act; application in regard to National Insurance Act . . . . .	1883
financial provisions . . . . .	1817
friendly societies act; power of societies to register under . . . .	1836
friendly societies; existing fund of; provisions as to . . . . .	1834
general provisions . . . . .	1867



BRITISH NATIONAL INSURANCE ACT— <i>Continued</i>	PAGE
health insurance benefits . . . . .	1878
health insurance; rate of contribution . . . . .	1874
hospitals; powers to subscribe to . . . . .	1783
husband; punishment of in certain cases of neglect . . . . .	1783
income; provisions relating to . . . . .	1825
inmates of charitable homes; special provisions as to . . . . .	1816
inmates of hospitals; provisions in case where contributors are	1774
inspectors; powers of . . . . .	1869
insurance commissioners; advisory committee; constitution of	
insurance commissioners; appointment of inspectors . . . . .	1821
insurance commissioners; determination of questions by . . . . .	1830
insurance commissioners; power to make regulations . . . . .	1830
insurance commissioners; power to make regulations for pay-	
ment of contributions . . . . .	1767
insurance committees; appointment of . . . . .	1822
insurance committees; powers and duties of . . . . .	1824
insurance committees; power to remove difficulties . . . . .	1837
insurance; reinsurance for the purpose of maternity benefits	1783
interpretation of . . . . .	1837
Ireland; application of act to . . . . .	1843
local government board; powers of . . . . .	1836
malingering; excessive sickness; inquiries into cause of . . . . .	1826
married woman; special provisions with respect to . . . . .	1800
maternity benefits; administration of . . . . .	1782
maternity benefits; re-insurance for purposes of . . . . .	1783
medical benefits; administration of . . . . .	1777
medical and sanatorium benefits; power of counsels of boards	
and districts to contribute for purposes of . . . . .	1784
medical committees; local . . . . .	1825
“membership”; definition of . . . . .	1838
mercantile marine; special provisions as to . . . . .	1811
military service; persons in; special provisions in relation to .	1804
minors; who are members of approved societies; provisions	
as to . . . . .	1836
Monmouthshire deemed part of Wales . . . . .	1838
national health insurance fund . . . . .	1817
Naval and Military service; persons in; special provisions in	
relation to . . . . .	1804
offenses . . . . .	1833
outdoor relief . . . . .	1868
Parliament; acts of; application to approved societies and	
sections . . . . .	1836

Volume 2 begins at page 1053

BRITISH NATIONAL INSURANCE ACT— <i>Continued</i>	PAGE
penalties . . . . .	1833
penalties; punishment of husband in certain cases of neglect	1783
persons over 65 at commencement of act; special provisions	
in relation to . . . . .	1815
power to make regulations for the payment of contributions	1767
power to vary benefits in certain cases . . . . .	1775
preference of claims where employers bankrupt . . . . .	1868
procedure; in case of disputes . . . . .	1831
procedure for making special orders . . . . .	1870
provident fund; provisions as to existing provident fund . . .	1835
provisions in case of contributors who are inmates of hos-	
pitals, etc. . . . .	1774
punishment of husband in certain cases of neglect . . . . .	1783
rates and rules for contributions by voluntary contributors	1766
rates and rules for contributions by employed contributors	
and employers . . . . .	1765
rates of benefits; health insurance . . . . .	1878
rates of contributions relating to health insurance . . . . .	1874
reduced rates of benefits in certain cases . . . . .	1770
reduced rates of benefits; where contributions are in arrear	1771
regulations; power to make for payment of contributions . .	1767
insurance for purposes of maternity benefits . . . . .	1783
repayment of benefits if improperly paid . . . . .	1834
reserve values . . . . .	1819
rules as to payment and recovery of contribution . . . . .	1876
sanatoria benefits; administration of . . . . .	1781
sanatoria benefits to dependents; power to extend . . . . .	1782
sanatoria; supplementary provisions as to . . . . .	1829
schedules . . . . .	1871
Scilly Isles; deemed to be a county . . . . .	1838
Scotland; application of Act to . . . . .	1838
seasonal trades; special provisions as to . . . . .	1816
short title . . . . .	1871
stamps; provisions as to . . . . .	1867
supplementary provisions . . . . .	1829
suspension of member of approved society; effect of . . . .	1837
text of act . . . . .	1763
to whom act applies . . . . .	1763
transactions between insurance commissioners and approved	
societies . . . . .	1820
transfer from approved society to deposit insurance and vice	
versa . . . . .	1799

Volume 2 begins at page 1053

BRITISH NATIONAL INSURANCE ACT— <i>Continued</i>	PAGE
unemployment insurance . . . . .	1851
unemployment insurance; arrangements with associations of workmen in insured trades who make payments to mem- bers while unemployed . . . . .	1865
unemployment insurance; benefits; rates of . . . . .	1881
unemployment insurance; contributions . . . . .	1883
unemployment insurance; contributions by workmen, em- ployers and the treasury . . . . .	1851
unemployment insurance; courts of referees . . . . .	1855
unemployment insurance; determination of claims . . . . .	1853
unemployment insurance; disqualification for unemployment benefit . . . . .	1853
unemployment insurance; exclusive of subsidiary occupations	1864
unemployment insurance; interpretation and application	1866
unemployment insurance; offences and proceedings for re- covery of contributions . . . . .	1862
unemployment insurance; payment of contributions in cases of reservists or territorials during training . . . . .	1860
unemployment insurance; power to extend to other trades . .	1864
unemployment insurance; provisions in respect to workmen engaged through labor exchanges . . . . .	1861
unemployment insurance; rates and benefits . . . . .	1881
unemployment insurance; referees; courts of . . . . .	1855
unemployment insurance; refund of contributions paid in re- spect of workmen working short time . . . . .	1859
unemployment insurance; refund of part of contributions paid by employer in the case of workmen continuously em- ployed . . . . .	1859
unemployment insurance; repayment of part of contributions by workmen in certain cases . . . . .	1859
unemployment insurance; repayments to associations who make payments to persons whether workmen in insured trade or not while unemployed . . . . .	1866
unemployment insurance; right of workman in insured trades to unemployment benefit . . . . .	1851
unemployment insurance; saving for occasional employment in rural neighborhoods . . . . .	1860
unemployment insurance; statutory conditions for receipt of unemployment benefit . . . . .	1852
unemployment insurance; subsidiary provisions . . . . .	1861
unemployment insurance; trades covered . . . . .	1881
unemployment insurance; treasury advances . . . . .	1858

Volume 2 begins at page 1053

<b>BRITISH NATIONAL INSURANCE ACT—Continued</b>	<b>PAGE</b>
unemployment insurance; unemployment fund . . . . .	1857
“valuer”; definition of . . . . .	1838
varying benefits in certain cases . . . . .	1775
voluntary contributors . . . . .	1764
wages which are paid during sickness; special provisions where employer liable to pay such wages . . . . .	1809
Wales; establishment of commissioners for . . . . .	1849
<b>BURDEN OF PROOF; changes wrought by compensation laws</b>	<b>6</b>
<b>BURNING OF EMPLOYER’S PREMISES; workman killed     thereby; accident arising out of employment . . . . .</b>	<b>437</b>

**C**

<b>CALENDAR YEAR; same as fiscal year . . . . .</b>	<b>1934</b>
<b>CALIFORNIA; abolition of defenses . . . . .</b>	<b>74</b>
administration and procedure . . . . .	806
administration and procedure; amending pleadings . . . . .	807 n
administration and procedure; liberal rules of procedure . . . . .	806 n
administration and procedure; utmost good faith required in making compensation claims . . . . .	807 n
administration and procedure; what amounts to a dispute . . . . .	806 n
agreements settling compensation claims; filing and approval	1092
appeals . . . . .	895, 1089, 1116
appropriation . . . . .	1122
arising out of employment; assaults; injuries caused by third person . . . . .	506
arising out of employment; provision of statute . . . . .	519
arising out of employment; workman going from warehouse to office in automobile to learn whether night work will be required; injured on way . . . . .	455
assignment of compensation claims . . . . .	1089
attorney’s fees . . . . .	1089
burial expenses . . . . .	1089
Commissioner; definition of . . . . .	1072
commutation of compensation claims and awards . . . . .	952, 1092, 1093
compensation act; how cited . . . . .	1072
compensation; definition of . . . . .	1072
“compensation provisions of this Act”; definition of . . . . .	1072
compromising claims; effect of . . . . .	945, 1082
compromising compensation claims; release held to be receipt .	945 n
compromising compensation claims; release held to be binding .	945 n

CALIFORNIA— <i>Continued</i>	PAGE
conflict of authority between Industrial Accident Commission and Board of Supervisors.....	1108
contractors and subcontractors; liability of principal.....	532, 1090
contracts exempting employer from liability.....	1091
damages; definition of.....	1072
death benefits.....	588, 1080
death benefits; dependent; brother.....	589 n
death benefits; dependent; mother who was a widow and has married again.....	589 n
death benefits; dependents; claimant not a legal wife.....	591 n
death benefits; mother who is non-resident.....	590 n
death benefits; children who are minors.....	590 n
death benefits; dependent; mother.....	589 n
death benefits; dependent; wife and minor child.....	588 n
death benefits; dependents; amount due to partial dependents.....	588 n
death benefits; dependents; mother of minor daughter.....	590 n
death benefits; dependents; widow and minor children.....	590 n
death benefits; parents.....	589 n
death of injured employé; agreed compensation; how payable..	1080
definition of terms in Act.....	1072
dependents.....	588
dependents; sister of workman who was living with her husband	588
dependents; who are.....	1080, 1084
disability benefits.....	679, 1077
disability benefits; ability to do light work after accident.....	670
disability benefits; compensation only paid for loss of time.....	680 n
disability benefits; disability made more serious by illness or other contributing cause.....	674
disability benefits; loss of hand when other hand already injured	665
disability benefits; injuries to legs.....	666
disability benefits; loss of one eye.....	661, 663
disability benefits; permanent partial disability; injury to thumb.....	682 n
disability benefits; permanent partial disability; loss of arm..	683 n
disability benefits; permanent partial disability; what does not amount to.....	681 n
disclaimer of interest in proceeding.....	1087
election to adopt compensation principle.....	1121
election to operate under Act.....	1144
election of employers and employés who are not subject to Act to adopt compensation principle.....	1121
election of remedy by workman after injury.....	305

## Volume 2 begins at page 1053

CALIFORNIA— <i>Continued</i>	PAGE
employé; definition of . . . . .	1077, 1104
“employer”; definition of . . . . .	1077, 1104
“employment”; definition of . . . . .	1104
evidence; burden of proof on person claiming compensation . . . . .	807 n
exclusive remedy under Compensation Act . . . . .	1076
exemption of compensation awards . . . . .	1089
fees of courts . . . . .	1089
fees of witnesses . . . . .	1115
form; application for adjustment of claim . . . . .	808
form; notice of filing of application . . . . .	811
form; notice of hearing . . . . .	813
—See <i>Notice of Injury</i>	
funeral expenses . . . . .	559
“general order”; definition of . . . . .	1104
Industrial Accident Commission; apportionment of expenses from one department to another . . . . .	1075
Industrial Accident Commission; attorney; appointment of . . . . .	1073
Industrial Accident Commission; blanks; provision in relation to . . . . .	1075
Industrial Accident Commission; compensation of employés; how fixed . . . . .	1075
Industrial Accident Commission; creation and organization of . . . . .	1072
Industrial Accident Commission; employés; who may be ap- pointed . . . . .	1074
Industrial Accident Commission; fees of . . . . .	1075
Industrial Accident Commission; general powers . . . . .	1116
Industrial Accident Commission; manager of State compensa- tion insurance fund; appointment of . . . . .	1074
Industrial Accident Commission; powers and authority of . . . . .	1073
Industrial Accident Commission; principal office . . . . .	1073
Industrial Accident Commission; report to Governor . . . . .	1103
Industrial Accident Commission; secretary; appointment of . . . . .	1074
Industrial Accident Commission; Superintendent of Depart- ment of Safety; appointment of . . . . .	1074
information obtained by Commission is confidential; penalty for divulging . . . . .	1109
insurance benefits not to be considered in awarding compensa- tion . . . . .	1094
insurance carrier; definition of . . . . .	1072
insurance; direct liability of insurance carrier . . . . .	1095
insurance of compensation claim; when employer discharged from liability . . . . .	1095

CALIFORNIA— <i>Continued</i>	PAGE
insurance policy containing limitations.....	1096
insurance policy; what to contain.....	1095
insuring compensation.....	962, 1094
insuring compensation; cancellation of insurance policy on accident; bankruptcy of employer.....	962 n
intoxication; injury caused by, not compensated.....	1076
investigation of industrial accidents.....	1110
limitation on compensation payments.....	1078
limitation; when proceedings must be taken.....	1081
"Local order"; definition of.....	1104
manner of bringing employers and employes under Act.....	213
masculine gender includes feminine and neuter genders.....	1072
medical attention.....	549
medical examination of injured employé.....	928, 1086
medical examination; failure to submit to examination bars right to compensation.....	928 n
medical treatment.....	1077
minors; proceedings in relation to.....	1082
misrepresentations as to facts to obtain insurance; penalty....	1103
misrepresentations by employers as to amount of payroll; penalty.....	1103
modifying awards.....	921
mutual workmen's compensation insurance companies; creation	1123
notice by employé of rejection of compensation principle; form..	215
notice of election by employer to adopt the compensation prin- ciple; form.....	214
notice of injury and claims for compensation.....	1085
notice of injury; knowledge by employer without notice being given.....	679 n
notices of injuries and of claims for compensation.....	770
"order"; definition of.....	1104
penalties; violation of safety statute, rules and regulations....	1109
permanent disability; definition of.....	1080
physical examination of injured employé.....	928, 1086
"place of employment"; definition of.....	1103
pleadings; what required.....	1087
plural includes singular.....	1072
preference of compensation claims.....	1090
procedure.....	1081
procedure; administering oaths.....	1114
procedure; answer; when and how served.....	1087
procedure; before commission.....	1111

---

 Volume 2 begins at page 1053
 

---

CALIFORNIA—*Continued*

	PAGE
procedure before commission upon filing a statement of dispute	1086
procedure; continuing jurisdiction of commission	1088
procedure; filing award with clerk of Superior Court and entering judgment thereon	1088
procedure; findings and award; when and how made	1087
procedure; hearings and investigations; regulations in regard to	1114
procedure; productions of books and papers	1114
procedure; service of notices, orders and decisions	1112
procedure; serving official acts	1114
procedure; statement of dispute; what to contain	1086
reports of accidents by employers and insurance companies	1110
referee; report of	1114
refusal of employé to submit to proper medical treatment; effect	1082
rehearing	1116
releases from compensation claims; when valid	1092
report to Governor by Industrial Accident Commission	1122
reports of accidents; not open to public inspection	1110
reports of injuries by employers	934
review of orders, findings, decisions and awards	1089
Roseberry Employers' Liability Act of 1911; text of	1129
rules of practice and procedure; power of Commission to adopt "safeguard"; definition of	1105
safeguard; obligation of employer to furnish	1105
safety; conflict with Board of Supervisors; how provided against "safety"; definition of	1105
safety; employés destroying safety devices; penalty	1105
safety; hearings relating to safety orders	1106
safety; Industrial Accident Commission; jurisdiction of	1105
safety; powers to enforce orders in relation to "safety devices;" definition of	1105
"safety provisions of this Act"; definition of	1072
safety requirements of as to employers	1105
safety rules and regulations by the commission; power to prescribe	1106
satisfaction of judgment; how made	1089
seal of Industrial Accident Commission	1073
serious and wilful misconduct; foreman violating orders as to method of unloading logs from car	493
State and municipal corporations subject to Act	1077
State compensation insurance fund; cancellation of policies issued by	1100
State compensation insurance fund; contract of insurance	1100



## Volume 2 begins at page 1053

CALIFORNIA— <i>Continued</i>	PAGE
State compensation insurance fund; fixing rates.....	1099
State compensation insurance fund; insuring employers who perform labor incidental to occupation and also members of families.....	1100
State compensation insurance fund; investment of.....	1102
State compensation insurance fund; jurisdiction of commission over.....	1097
State compensation insurance fund; meaning of.....	1097
State compensation fund; municipal corporations must insure in state fund unless the risk is refused.....	1102
State compensation insurance fund; premium rates; how paid by municipal corporations.....	1102
State compensation insurance fund; treasurer, the custodian of	1101
State compensation insurance fund; monthly statements to be submitted to State Board of Control.....	1101
subpoena; power to issue.....	1114
subrogation of claim to employer when injury caused by third person.....	1091
successive injuries; how compensation computed.....	1082
Superior Court; jurisdiction of.....	1115
text of compensation act.....	1071
text of Roseberry Employers' Liability Act.....	1129
to whom Act applies.....	105, 1076
vacancies in commission; how filled.....	1073
wages which are basis of compensation claims.....	746, 1082
waiting period.....	543, 1077
weekly loss in wages; how computed.....	1084
wilful injury; action for.....	1076
wilful misconduct; disobedience of orders which were not enforced.....	591 n
wilful misconduct; injury caused by not compensated.....	1076
wilful misconduct; what does not amount to.....	681 n
witness fees.....	1115
CALL OF NATURE; accident arising out of employment.....	451
CANADA. See <i>Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan.</i>	
CASES CITED; employers' liability; how cited in this work....	339
CASUAL EMPLOYÉS; application of Compensation Acts to....	136
definition of.....	136
—See title of each State.	

	PAGE
CHARITABLE ORGANIZATIONS; persons employed by out of charity; application of compensation act.....	119
CHILDREN; minors securing position by misrepresenting age; application of compensation act.....	133
CLASSIFICATION OF DISABILITY.....	644
CLASSIFICATION OF STATUTES.....	207
COAL GAS; inhalation of causing paralysis; injury arising out of employment.....	371
COLLECTORS; injured while away from employer's premises; arising out of employment.....	452
COMMON LAW DEFENSES; changes wrought by Workmen's Compensation Laws.....	6
origin and nature of.....	3
reasons for abolishing under Compensation Act.....	69
—See <i>Abolition of Defenses</i> ; also title of each State	
COMMUTATION OF CLAIMS AND AWARDS.....	951
Arizona.....	951
California.....	952
Connecticut.....	952
Illinois.....	952
Iowa.....	953
Kansas.....	953
Kentucky.....	1052 n
Maryland.....	953
Massachusetts.....	953
Michigan.....	954
Minnesota.....	954
Nebraska.....	954
Nevada.....	954
New Hampshire.....	955
New Jersey.....	955
New York.....	955
Ohio.....	956
Oregon.....	956
Rhode Island.....	956
Texas.....	956
Washington.....	956
West Virginia.....	957
Wisconsin.....	957

	PAGE
COMPENSATION ACTS; classification of statutes.....	207
review of American Acts thus far passed.....	21
COMPROMISING COMPENSATION CLAIMS.....	940
not allowed as a usual thing.....	940
payment of less than statutory amount as basis of release....	650
payment of lump sum to workman before death does not re-	
lease claim by widow.....	953 n
receipt; when it will not be considered final discharge.....	943
release held to be binding.....	945 n
release held to be without consideration.....	943
Arizona.....	945
California.....	945
Connecticut.....	946
Illinois.....	946
Iowa.....	946
Kansas.....	946
Maryland.....	946
Massachusetts.....	947
Michigan.....	947
Minnesota.....	947
Nebraska.....	947
Nevada.....	947
New Hampshire.....	948
New Jersey.....	948
New York.....	949
Ohio.....	949
Oregon.....	949
Rhode Island.....	950
Texas.....	950
Washington.....	950
West Virginia.....	950
Wisconsin.....	950
CONDITION DUE TO MEDICAL TREATMENT; injury	
arising out of employment.....	394
CONFLICT OF LAWS; extraterritorial effect of workmen's	
compensation statutes.....	34
CONVICT; workman not entitled to compensation while in	
prison....	648
CONNECTICUT; abolition of defenses.....	78, 1144
acceptance of compensation principle.....	1144
administration of procedure.....	814

Volume 2 begins at page 1053

CONNECTICUT—*Continued*

	PAGE
advance payments; allowance for . . . . .	1150
agreements as to compensation; approval . . . . .	1153
appeals . . . . .	895
appeals; when and how taken . . . . .	1155
arising out of employment; provision of statute . . . . .	519
assessments of mutual insurance associations . . . . .	1161
attorney's fees subject to approval of Compensation Commis- sioner . . . . .	1157
attorneys; parties may appear by on hearings relating to com- pensation . . . . .	1154
average weekly earnings . . . . .	1150
casual employes . . . . .	1144
claims for compensation; what to contain and how served . .	1152
"Commissioner"; definition of . . . . .	1158
Commissioners; compensation; acting as Board . . . . .	1152
Commissioners; compensation; appointment and powers of . . . . .	1150
Commissioners; compensation; salaries and expenses . . . . .	1152
commutation of claims and awards . . . . .	952
commutation of compensation agreements and awards in lump sums . . . . .	1155
compensation commissioners; appointment and powers of . .	1150
compromising compensation claims . . . . .	946
constitutional law; effect of statute being declared uncon- stitutional . . . . .	1159
contractors and subcontractors; liability of principal . . . . .	1146
contractors and subcontractors; liability to employes of . . . .	533
contracts relieving employer of compensation; application not valid . . . . .	1157
death benefits . . . . .	594, 1147
dependents . . . . .	594
"dependents"; definition of . . . . .	1158
dependents; who are . . . . .	1148
disability benefits . . . . .	685, 1148
effect of non-acceptance of Act . . . . .	1145
election of remedy by workman after injury . . . . .	307
"employé"; definition of . . . . .	1159
"employer"; definition of . . . . .	1158
evidence; Commission not bound by common law or statutory rules of evidence or procedure . . . . .	1154
exemption of compensation claims . . . . .	1157
fees of Commissioners . . . . .	1154

CONNECTICUT— <i>Continued</i>	PAGE
forms; custody; how distributed.....	1158
forms; where and how secured.....	814
funeral expenses.....	560
insurance associations; premiums and assessments.....	1161
Insurance Commissioner; appeal to Superior Court from rulings relating to mutual insurance associations.....	1162
insurance; Employers' Mutual Insurance Associations; how organized and powers of.....	1159
insurance of compensation claims.....	965, 1156
insurance of compensation claims; requirements of insurance policies.....	1156-7
interstate commerce; application of act to interstate employes	1158
limitation; appeals; when may be taken.....	1155
limitation; time within which claim for compensation must be made.....	1152
limitation; time within which notice of injury must be given	1152
manner of acceptance and withdrawal.....	1145
manner of bringing employer and employé under Act....	216, 1144
manner of bringing employer and employé under Act; notice by employé of refusal to adopt the compensation prin- ciple; form.....	220
manner of bringing employer and employé under Act; no- tice by employer of rejection of compensation principle; form.....	219
medical and surgical attention.....	550, 1146
medical examinations.....	929, 1153
minors; claim by; how conducted.....	1157
modification of awards.....	921, 1150
mutual insurance associations; assessments.....	1161
mutual insurance associations; by-laws and regulations.....	1162
mutual insurance associations; investments.....	1161
mutual insurance associations; premiums and assessments...	1161
mutual insurance associations; appeal to Superior Court from ruling of Insurance Commissioner.....	1162
notice by employé to employer of withdrawal of acceptance of compensation principle; form.....	226
notice by employer to employé of refusal to adopt compensa- tion principle; form.....	221
notice by employé to employer of refusal to adopt compensa- tion principle; form.....	222
notice of employer to employé of withdrawal of acceptance of compensation principle; form.....	226

CONNECTICUT—*Continued*

	PAGE
notices and claims of compensation; what to contain and how served . . . . .	1152
notices; manner of serving . . . . .	1158
notices of injuries and of claims for compensation . . . . .	772
obligations to pay compensation not to be avoided . . . . .	1157
"outworker"; definition of . . . . .	1159
partial incapacity; compensation for . . . . .	1149
payment of compensation claims when and how made . . . . .	1158
penalty for violation of Act . . . . .	1158
physical examinations . . . . .	929, 1153
physician's fees, subject to approval of Commissioner . . . . .	1157
preference of compensation claims . . . . .	1157
procedure; awards of Commissioner filed in Superior Court . . . . .	1155
procedure; hearings on compensation claims and procedure thereon . . . . .	1154
procedure; parties may appear by attorneys . . . . .	1154
repealing Act . . . . .	1162
reports of accidents by employers . . . . .	934, 1152
revision of awards . . . . .	1150
safety rules; insurance associations . . . . .	1161
service of notice . . . . .	1158
substitute systems of computation . . . . .	1156
text of Act . . . . .	1144
third person causing injury; liability of . . . . .	1146
to whom Act applies . . . . .	151, 1144
total incapacity; compensation for . . . . .	1148
wages which are the basis of compensation . . . . .	748, 1150
waiting period . . . . .	544, 1147
when Act became effective . . . . .	1158, 1162
withdrawal of acceptance of compensation principle by employé; form . . . . .	224
withdrawal of acceptance of compensation principle by employer; form . . . . .	224
witnesses; fees allowed . . . . .	1155

CONSTITUTIONAL LAW; decisions holding compensation laws

to be valid . . . . .	11
discussion of cases relating to constitutionality of compensation Acts . . . . .	29
effect of <i>Ives</i> case on Workmen's Compensation legislation . . . . .	10
elective compensation laws and the constitutional question involved . . . . .	11

---

 Volume 2 begins at page 1053
 

---

CONSTITUTIONAL LAW— <i>Continued</i>	PAGE
power to abolish common-law defenses . . . . .	18
presumptive election as affecting constitutional question . . .	13
taking property without due process; economic fallacy as related to compensation Act . . . . .	2
treaties as affecting rights of aliens as dependents . . . . .	582
CONSTRUCTION CREW; boarding mistress; application of compensation Act . . . . .	118
CONTAGIOUS DISEASES; injury arising out of employment . . .	358
CONTRACT; construction of in relation to independent employ- ment; question of law . . . . .	109
exemption of employers from operation of Acts . . . . .	144
CONTRACTORS; independent; application of compensation Act	127
liability of principals for injuries to workmen of contractors and subcontractors; decisions under British Act . . . . .	528
liability to employes of; Arizona . . . . .	532
liability to employes of; California . . . . .	532
liability to employes of; Connecticut . . . . .	533
liability to employes of; Illinois . . . . .	534
liability to employes of; Iowa . . . . .	534
liability to employes of; Kansas . . . . .	535
liability to employes of; Maryland . . . . .	536
liability to employes of; Massachusetts . . . . .	537
liability to employes of; Michigan . . . . .	537
liability to employes of; Minnesota . . . . .	538
liability to employes of; Nebraska . . . . .	538
liability to employes of; Nevada . . . . .	539
liability to employes of; New Hampshire . . . . .	539
liability to employes of; New Jersey . . . . .	540
liability to employes of; New York . . . . .	540
liability to employes of; Ohio . . . . .	540
liability to employes of; Oregon . . . . .	540
liability to employes of; Rhode Island . . . . .	540
liability to employes of; Texas . . . . .	541
liability to employes of; Washington . . . . .	541
liability to employes of; West Virginia . . . . .	541
liability to employes of; Wisconsin . . . . .	541
CONTRACTORS AND SUBCONTRACTORS; liability of prin- cipals for injuries to workmen of contractors and sub- contractors . . . . .	527
CONTRIBUTING CAUSE; disability made more serious by ill- ness; injury arising out of employment . . . . .	391

	PAGE
CONTRIBUTING NEGLIGENCE; origin of as defense.....	3
power to abolish defense of.....	18
COPPER POISONING; injury arising out of employment.....	374

**D**

DANGER; workman unnecessarily going to place of; injury arising out of employment.....	440
DEATH BENEFITS.....	564
compensation for previous injury not included in determining basis of compensation for subsequent injury causing death	744
deducting poor law relief received by dependent.....	744
dependence; dependents receiving other income because of death of workman.....	583
dependent of more than one workman.....	575
dependents; aliens.....	582
dependents; apportioning compensation among dependents....	804
dependents; children mentally and physically deficient.....	623 n
dependents; claimant not a legal wife.....	591 n
dependents; claim by dependents when compensation to workman terminated before death.....	584
dependents; claim for compensation by personal representative of deceased dependent.....	585
dependents; division of payments due to different dependents..	604 n
dependents; father.....	603 n
dependents; illegitimate children.....	581
dependents; inmate of workhouse.....	582
dependents; mother.....	603 n
dependents; mother of illegitimate child as dependent of father of child.....	581
dependents; mother who was a widow and has married again...	589 n
dependents; parents of illegitimate children.....	581
dependents; posthumous child.....	580
dependents; posthumous illegitimate children.....	581
dependents; Quebec; orphan whose mother died prior to death of workman.....	586
dependents; question of dependency is one of fact.....	583
dependents; right of dependents is independent of that of deceased.....	584
dependents; sister of workman who was living with her husband.....	588 n
dependents; who are.....	567



---

 Volume 2 begins at page 1053
 

---

<b>DEATH BENEFITS—Continued</b>	<b>PAGE</b>
dependents; wife separated from husband before his death. . . .	577
estoppel by payment of compensation before death of right to deny liability therefor after death. . . . .	567
father dependent of son; allowance for son's maintenance. . . .	743
mother whose husband is living as dependent of son. . . . .	576
necessity of administering on estate of workman. . . . .	574
parents. . . . .	575
partial and total dependents of same workman. . . . .	575
place of payment. . . . .	606 n
presumption of death from absence. . . . .	566
total dependency of mother on one son when other sons are liv- ing. . . . .	576
to whom payable. . . . .	1248
when death occurs after compensation has been paid for a time. .	567
widow and children dependents of father when other children contributed to support of family. . . . .	577
Arizona. . . . .	587
California. . . . .	588
Connecticut. . . . .	594
Illinois. . . . .	596
Iowa. . . . .	597
Kansas. . . . .	599
Kentucky. . . . .	1052 r
Maryland. . . . .	601
Massachusetts. . . . .	602
Michigan. . . . .	603
Minnesota. . . . .	609
Nebraska. . . . .	612
Nevada. . . . .	616
New Hampshire. . . . .	617
New Jersey. . . . .	618
New York. . . . .	621
Ohio. . . . .	623
Oregon. . . . .	625
Rhode Island. . . . .	627
Texas. . . . .	630
Washington. . . . .	631
West Virginia. . . . .	634
Wisconsin. . . . .	636

<b>DEATH NOT NATURAL OR PROBABLE CONSEQUENCE OF INJURY; injury arising out of employment. . . . .</b>	<b>398</b>
---	------------

	PAGE
DEFENSES; abolition of . . . . .	69
common law; origin and nature of . . . . .	3
common law; changes wrought by workmen's compensation laws . . . . .	6
common law; power to abolish . . . . .	18
exceptional cases in which compensation is denied . . . . .	6
DEPENDENT; adopted child; when entitled to compensation under New Jersey Act . . . . .	619 n
alien; evidence as to records of postoffice money order depart- ment . . . . .	590 n
actual dependents; meaning of term under New Jersey Act . . . . .	619 n
aliens . . . . .	582
aliens; treaties as affecting rights of aliens as dependents . . . . .	582
aliens; widow residing in Hungary; construction of Wisconsin Act . . . . .	638 n
claimant not a legal wife . . . . .	591 n
claim by dependents when compensation to workman termi- nated before death . . . . .	584
children mentally and physically deficient . . . . .	623 n
definition of word . . . . .	571
deceased; claim for compensation by personal representative of deceased dependent . . . . .	585
dependent of more than one workman . . . . .	575
dependents receiving other income because of death of work- man . . . . .	583
division of payments due to different dependents . . . . .	604 n
father . . . . .	603 n
illegitimate children . . . . .	581
inmate of workhouse . . . . .	582
mother . . . . .	603 n
mother of illegitimate child as dependent of father of child . . . . .	581
mother whose husband is living as dependent of son . . . . .	576
mother who was a widow and has married again . . . . .	589 n
parents . . . . .	575
parents of illegitimate children . . . . .	581
partial and total dependents of same workman . . . . .	575
posthumous child . . . . .	580
posthumous children; when dependents . . . . .	581
Quebec; orphan whose mother died prior to death of workman; compensation under Quebec Act . . . . .	586
question of dependency is one of fact . . . . .	583

<b>DEPENDENT—Continued</b>	<b>PAGE</b>
right of is independent of that of deceased . . . . .	584
sister of workman who was living with her husband . . . . .	588 n
step children; when entitled to compensation under the New Jersey Act . . . . .	620 n
"support," definition of . . . . .	639 n
total dependence of mother on one son when other sons are living who are . . . . .	576 567
widow and children dependents of father when other children contributed to support of family . . . . .	577 577
wife separated from husband before his death . . . . .	577
Arizona . . . . .	587
California . . . . .	588
Connecticut . . . . .	594
Federal Compensation Act; who are . . . . .	1035
Illinois . . . . .	596
Iowa . . . . .	597
Kansas . . . . .	599
Maryland . . . . .	601
Massachusetts . . . . .	602
Michigan . . . . .	606
Minnesota . . . . .	609
Nebraska . . . . .	612
Nevada . . . . .	616
New Hampshire . . . . .	617
New Jersey . . . . .	618
New York . . . . .	621
Ohio . . . . .	623
Oregon . . . . .	625
Rhode Island . . . . .	627
Texas . . . . .	630
Washington . . . . .	631
West Virginia . . . . .	634
Wisconsin . . . . .	636
 <b>DISABILITY BENEFITS . . . . .</b>	 642
classification of disability . . . . .	644
compensation for one day . . . . .	647
computing waiting period; consecutive or nonconsecutive days .	646
conflict; workman not entitled to compensation while in prison .	648
consecutive and not concurrent payments for temporary dis- ability and specific indemnity . . . . .	654
deducting insurance benefits to which employes contributed . . .	677

DISABILITY BENEFITS— <i>Continued</i>	PAGE
dismissal for misconduct of workman suffering from partial permanent disability . . . . .	648
divorced man paying alimony is unmarried for compensation purposes in Washington . . . . .	651
double compensation . . . . .	676
hospital fees; deducting hospital fees from compensation . . . . .	646
increased period of disability by failure to follow physician's instructions . . . . .	647
infant; probable earnings . . . . .	646
loss of several fingers; consecutive payments for each . . . . .	655
occupational diseases contracted partly in the employment of two employers; apportioning compensation . . . . .	649
pain and suffering not compensated . . . . .	645
payment of less than statutory amount as basis of release . . . . .	650
payments; how required . . . . .	649
permanent partial disability . . . . .	653
permanent partial disability; amputation of fingers when wound healing . . . . .	655
permanent partial disability; complete blindness caused to eye of which sight partially destroyed . . . . .	664
permanent partial disability; consecutive and not concurrent payments for temporary disability and specific indemnity . . . . .	654
permanent partial disability; injuries to and loss of fingers not otherwise classified . . . . .	656
permanent partial disability; injuries to legs . . . . .	666
permanent partial disability; loss of hand when other hand already injured . . . . .	665
permanent partial disability; loss of one eye . . . . .	659
permanent partial disability; loss of toes . . . . .	658
permanent partial disability; loss of use of fingers without amputation . . . . .	656
permanent partial disability; minimum amount in all cases of specific indemnity in New Jersey . . . . .	653
permanent partial disability; one eye so injured that both cannot be used . . . . .	664
permanent partial disability; removal of eye already blind . . . . .	665
permanent partial disability; under schedule of specific indemnities two weeks waiting period should not be deducted . . . . .	653
permanent partial disability; what does not amount to under California law . . . . .	681 n
permanent total disability . . . . .	651
permanent total disability; incapacity to do regular work . . . . .	651

DISABILITY BENEFITS— <i>Continued</i>	PAGE
permanent total disability; injuries which amount to permanent total disability . . . . .	652
place of payment of compensation . . . . .	652
reduced earnings owing to general fall in wages . . . . .	648
State institution; compensation payments; part of current expenses . . . . .	650
Sundays, holidays and shutdowns for which compensation is due . . . . .	647
temporary partial disability . . . . .	670
temporary partial disability; ability to do light work after accident; exaggeration of injury . . . . .	670
temporary partial disability; clumsiness due to injury as ground of incapacity . . . . .	674
temporary partial disability; disability by disease accelerated by accident basis of compensation . . . . .	674
temporary partial disability; disability made more serious by illness or other contributing cause . . . . .	674
temporary partial disability; inability to obtain employment in district where workman lives . . . . .	671
temporary partial disability; loss of index finger . . . . .	675
temporary partial disability; miscellaneous injuries for which compensation awarded . . . . .	675
temporary partial disability; recurrent attacks of industrial disease . . . . .	675
temporary partial disability; wages and compensation after accident need not equal wages before injury . . . . .	672
temporary partial disability; wages and compensation in excess of wages before accident . . . . .	673
temporary partial disability; workman receiving same wages after as before injury . . . . .	672
temporary total disability . . . . .	667
temporary total disability; heart trouble developing after injury . . . . .	668
temporary total disability; miscellaneous specific cases in which compensation was awarded . . . . .	668
temporary total disability; unsuccessful efforts to obtain employment . . . . .	667
temporary total disability; waiting for opportunity to have operation performed at hospital . . . . .	667
temporary total disability; workman earning same wages as before the injury . . . . .	668
total incapacity; refusal of former employer to supply work to injured employé . . . . .	651

Volume 2 begins at page 1053

DISABILITY BENEFITS— <i>Continued</i>	PAGE
voluntary idleness of workman as tending to prolong disability	647
Arizona.....	678
California.....	679
Connecticut.....	685
Illinois.....	687
Iowa.....	691
Kansas.....	694
Kentucky.....	1052p
Maryland.....	694
Massachusetts.....	695
Michigan.....	697
Minnesota.....	699
Nebraska.....	701
Nevada.....	704
New Hampshire.....	705
New Jersey.....	706
New York.....	709
Ohio.....	712
Oregon.....	714
Texas.....	720
Washington.....	721
West Virginia.....	723
Wisconsin.....	724
DISABILITY MADE MORE SERIOUS BY ILLNESS OR OTHER CONTRIBUTING CAUSE; injury arising out of employment.....	391
DISEASE; disability made more serious by illness or other con- tributing cause.....	674
DISEASE CONTRACTED IN HOSPITAL AFTER ACCI- DENTAL INJURY; injury arising out of employment	397
DISEASES DUE TO TRAUMATISM BUT WITHOUT DI- RECT EXTERNAL INFECTION OR CONTAGION; injury arising out of employment.....	359
DISOBEDIENCE OF SPECIFIC ORDERS; injury arising out of employment.....	493
DOG; bite of while mad; injury arising out of employment.....	513
DOMESTIC SERVANTS; application of compensation Act to..	134
definition of.....	134
— See title of each State	
DOUBLE COMPENSATION; rule under Massachusetts Act	676

	PAGE
DRAWING INFERENCES FROM UNEXPLAINED INJURIES.....	516
DRINK; workman injured while getting drink of water.....	450
DRIVERS OF TAXI-CABS OPERATED ON SHARES; application of compensation Act.....	125
DROWNING; injury arising out of employment.....	380
DUE PROCESS OF LAW; taking property without due process; economic fallacy as related to compensation Act.....	2

## E

EARNINGS; infant; probable earnings.....	646
—See <i>Wages which are Basis of Compensation</i>	
ECONOMIC PRINCIPLES INVOLVED.....	1
ECZEMA; aggravation of skin by salt water; injury arising out of employment.....	358
injury arising out of employment; injured elbow.....	355
EIGHT HOURS' ACT; change of rate of wages by reason of; wages which are basis of compensation.....	743
ELECTION OF REMEDIES; recovery of compensation; when bar to action for damages.....	942
right of workman to claim both damages and compensation under New Jersey Act when injury caused by third person.....	620 n
third person causing injury; settlement with third person; when does not release employer.....	948
ELECTION OF REMEDY BY WORKMAN AFTER INJURY	300
Arizona.....	305
California.....	305
Connecticut.....	307
Illinois.....	310
injury caused by third person.....	302
Iowa.....	311
Kansas.....	312
Kentucky.....	1052 m
Maryland.....	313
Massachusetts.....	313
Massachusetts; effect of letter claiming damages as election.....	314
Michigan.....	315
Minnesota.....	316

---

 Volume 2 begins at page 1053
 

---

<b>ELECTION OF REMEDY, ETC.—Continued</b>	PAGE
Nebraska.....	316
Nevada.....	317
New Hampshire.....	319
New Jersey.....	320
New Jersey; rules adopted by court.....	302
New York.....	321
Ohio.....	322
Oregon.....	324
Rhode Island.....	326
right to elect irrespective of statutory provision.....	300
Texas.....	326
Washington.....	327
West Virginia.....	329
Wisconsin.....	330
<b>ELECTIVE COMPENSATION LAWS; outgrowths of decision</b>	
in <i>Ives</i> case.....	208
constitutional question involved.....	11
presumptive election and effect on constitutional question..	13
<b>ELEVATOR; arising out of employment; workman injured while</b>	
being transported on elevator furnished by employer...	426
<b>EMERGENCY; acting on; injury arising out of.....</b>	501
conductor on railroad employing assistant.....	117
saving life of another; injury arising out of employment...	505
<b>EMPLOYERS' LIABILITY CASES; how cited.....</b>	339, 404
<b>EMPLOYÉ; superintendent of knitting mill is an employé within</b>	
the meaning of the New York Employers' Liability Act	108
who is an employé within the meaning of the compensation	
Acts.....	106
<b>ENTERITIS; inhalation of sewer gas; injury arising out of em-</b>	
ployment.....	370
<b>ERYSIPELAS; injury arising out of employment; when wound is</b>	
an old one.....	355
<b>ESTOPPEL; by payment of compensation before death of right</b>	
to deny liability therefor after death.....	567
<b>EVIDENCE; alien; records of post office money order department</b>	590
burden of proof.....	874 n
burden of proof as to serious and wilful misconduct.....	800
burden of proof; changes wrought by compensation laws....	6
burden of proof; diminishing payments; modifying awards	916
burden of proof on person claiming compensation.....	807 n



EVIDENCE— <i>Continued</i>	PAGE
burden of proof to show accident arose out of employment.	867 n
burden of proving the injury was caused by accident is on the workman . . . . .	797
dependency; question of is one of fact . . . . .	583
drawing inferences from unexplained injuries . . . . .	516
hearsay; declarations of deceased workman in proceedings by dependents . . . . .	840 n
hearsay; statement by deceased workman to his physician as to the cause of accident . . . . .	801
hearsay; statement of deceased workman against interest of dependents . . . . .	801
hearsay; statements made by deceased workman of; manner of injury . . . . .	847 n
hearsay; statement made by injured employé who subsequently died in absence of employer as to bodily or mental feelings . . . . .	800
inferences in the absence of direct proof . . . . .	798
modifying awards; lack of evidence as to exact amount workman is able to earn . . . . .	920
physicians' certificates . . . . .	801
presumption of death from absence . . . . .	566
question of fact as to which there is any evidence to support	802
EXAGGERATION OF INJURY; ability to do light work after accident . . . . .	670
EXCEPTIONAL CASES IN WHICH COMPENSATION IS DENIED . . . . .	6
EXEMPTION OF EMPLOYERS FROM OPERATION OF ACT BY CONTRACT . . . . .	144
EXPLOSION OF GUN; seaman injured by; injury arising out of employment . . . . .	515
EXPOSURE; pneumonia following; injury arising out of employment . . . . .	371
EXTRA-TERRITORIAL EFFECT OF WORKMEN'S COMPENSATION STATUTES . . . . .	34
EYE; complete blindness caused to eye of which sight partially destroyed . . . . .	664
injury arising out of employment; foreign substance in eye	514
loss of one eye; disability benefits . . . . .	659
one eye so injured that both cannot be used . . . . .	664
removal of eye already blind . . . . .	665

---

 Volume 2 begins at page 1053
 

---

<b>F</b>	<b>PAGE</b>
<b>FALLS CAUSED BY FITS OR VERTIGO; injuries arising out of employment</b> .....	360
<b>FARM LABORERS; application of compensation Acts to</b> .....	142
definition of.....	142
—See title of each State.	
<b>FEDERAL ACT</b> .....	990
ability to resume work.....	1032
administration.....	1048
arising out of employment; assault; foreman stopping fight between two workmen.....	508
arising out of employment; assault; one workman trying to stop fight between two other workmen.....	508
arising out of employment; assault; workman struck by foreman in fit of anger.....	508
arising out of employment; bite by mad dog.....	513
arising out of employment; blasting; foreman on public highway struck by stone thrown by blast on government premises.....	411
arising out of employment; civil engineer struck by cars by reason of being partially blinded by cinders.....	454
arising out of employment; disobedience of specific orders...	494
arising out of employment; emergency; fireman injured while trying to extinguish a fire outside the Canal zone.....	502
arising out of employment; eyes affected by electric light...	345
arising out of employment; injury at mealtime.....	446
arising out of employment; night foreman on public street going to place of employment.....	406
arising out of employment; railroad conductor on an excursion train run with permission for the pleasure of the employés	460
arising out of employment; storeman on way from hotel to labor train.....	405
arising out of employment; surveyor occupying quarterboat falling overboard when returning to boat at night.....	455
arising out of employment; transferring workman to and from place of employment on train furnished by employer....	408
arising out of employment; tuberculosis from traumatism....	346
arising out of employment; walking on railroad track adjoining highway leading to home.....	411
arising out of employment; workman going to another portion of premises to talk with fellow employé for his own convenience or pleasure.....	435

## Volume 2 begins at page 1053

FEDERAL ACT— <i>Continued</i>	PAGE
arising out of employment; workman on public road leading to place of employment.....	405
arising out of employment; workman slipping and falling on Government property, but before reaching place of employment.....	425
arising out of employment; workman stumbling against a piece of iron on employer's premises after quitting work.....	421
arsenal; what is an arsenal.....	993
artisans and laborers only covered by Act.....	997
artisans or laborers; who are.....	998
artisans or laborers; who are not.....	999
construction of fortification; what is.....	993
construction of in relation to meaning of term "injury" and "accidental injury".....	341
construction work in reclamation of arid lands; what is.....	994
computing year during which compensation is payable.....	1033
"bends;" as an accidental injury arising out of the employment.....	346
construction of as to injury; gradual weakening, wearing out or breaking down of workman.....	343
dependents.....	1035
dependents; who are.....	1035
employé climbing over train of cars to reach place of employment.....	425
employé of contractor.....	1003
explosion on Government premises while employé waiting for work to begin; injury arising out of employment.....	420
filing claim.....	1042
hazardous employments; what are.....	991
hazardous employments; what are not.....	992
independent contractor.....	1003
injuries before Act passed.....	1032
injury; definition of.....	1031
injury means disability.....	1031
"injury shall continue for more than fifteen days"; construction of.....	1003
laborer on work train injured going from one car to another..	411
lead poisoning.....	342
manufacturing establishment; employé working elsewhere...	996
manufacturing establishment; what is.....	994
manufacturing establishment; what is not.....	996
medical examination.....	1047

## Volume 2 begins at page 1053

<b>FEDERAL ACT—Continued</b>	PAGE
nature of work, not title, fixes status of employé.....	997
Navy Yard; what is employment in.....	993
negligence or misconduct; what constitutes.....	1004
negligence or misconduct; Acts which have been construed to be negligent.....	1024
negligence or misconduct; Acts which have been construed to be not negligent.....	1110
opinions of Solicitor of Department of Commerce and Labor; how cited.....	404
piece workers.....	1001
physical examination.....	1047
physician's certificate.....	1048
pneumonia from exposure.....	342
reclamation of arid lands; construction work in; what is.....	994
resignation of employé after injury.....	1046
ringing out on time close at end of day's work; employé slipped and fell by reason of other workmen pushing.....	422
services and employments without the Act.....	1001
successive claims.....	1033
text of Acts.....	1049
to whom act applies; services and employments without the Act.....	1001
wages which are the basis of compensation.....	1034
workman injured while occupying living quarters supplied by government.....	431
year during which compensation is payable; computation of	1033
<b>FELLOW SERVANT; defense of; power to abolish.....</b>	18
doctrine; origin of as defense.....	3
<b>FINGERS; injuries to and loss of fingers; not otherwise classified</b>	656
loss of use of without amputation.....	656
<b>FIREMAN; policeman acting as; application of compensation Act</b>	120
<b>FITS; injury arising out of employment.....</b>	360
<b>FOOTBALL PLAYER; is workman under British Act.....</b>	107
<b>FORMS; California; notice by employé of rejection of compensa- tion principle.....</b>	215
California; notice of election by employer to adopt the com- pensation principle.....	214
employers or beneficiaries application for lump sum payment	824
Illinois; notice by employé of rejection of compensation prin- ciple.....	232

FORMS— <i>Continued</i>	PAGE
Connecticut; notice by employer to employé of refusal to adopt compensation principle.....	221
Connecticut; notice by employer of rejection of compensation principle.....	219
Connecticut; notice by employer to employé of withdrawal of acceptance of compensation principle.....	226
Connecticut; notice by employé to employer of refusal to adopt compensation principle.....	222
Connecticut; notice by employé to employer of withdrawal of acceptance of compensation principle.....	226
Connecticut; notice of rejection of compensation principle by employé.....	220
Connecticut; withdrawal of acceptance of compensation principle by employé.....	224
Connecticut; withdrawal of acceptance of compensation principle by employer.....	224
Illinois; notice by employer of rejection of compensation principle.....	231
Illinois; notice by employers of adoption of compensation principle.....	231
Iowa; employé's notice of rejection of compensation principle.....	235
Iowa; notice by employer of rejection of compensation principle.....	234
Kansas; notice by employé of rejection of compensation principle.....	240
Kansas; notice by employé of withdrawal of rejection of Act..	241
Kansas; notice by employer employing less than five workmen to adopt the compensation principle.....	240
Kansas; notice by employer of rejection of compensation principle.....	239
Kansas; notice by employer of withdrawal of rejection of compensation principle.....	239
Massachusetts; notice by employer to employés of adoption of the compensation principle.....	243
Massachusetts; notice of claim of common-law rights.....	244
Massachusetts; notice of waiver of rights under common law previously claimed.....	244
Michigan; employer's acceptance of Act.....	247
Michigan; notice by employer to employé of acceptance of Act.....	249
Michigan; proof of posting of notice to employé.....	250
Minnesota; notice by employer to employé that employer is insured.....	253

FORMS—*Continued*

PAGE

Minnesota; notice of employers to employes that employer elects not to adopt the compensation principle.....	253
Minnesota; notice of workman to employer that workman elects not to accept compensation.....	254
Nebraska; affidavit of posting of notice.....	261
Nebraska; affidavit of service of notice of withdrawal of rejection of compensation principle.....	262
Nebraska; employer's withdrawal of notice of election of rejection of compensation principle.....	261
Nebraska; joint election of employers and employes to adopt the compensation principle.....	258
Nebraska; notice by employe of rejection of compensation principle.....	259
Nebraska; notice by employer of election not to pay compensation.....	259
Nebraska; notice by employe withdrawing election to reject compensation principle.....	262
Nebraska; proof of service of notice by employe.....	260
Nevada; employe's notice of rejection of terms of Act.....	267
New Jersey; notice by employer or employe of rejection of compensation principle.....	272
—See title <i>New Jersey</i> .	
Oregon; notice by employe of his election not to become subject to the Act.....	285
Oregon; notice by employer recalling election not to contribute to the Industrial Accident Fund.....	284
Oregon; notice by employe recalling his election not to become subject to the provisions of the Act.....	286
Oregon; notice by employer of rejection of compensation provision of statute.....	283
Oregon; notice by employer to be posted about works that he has or has not contributed to the Industrial Accident Fund	284
Rhode Island; notice by employer of acceptance of provisions of compensation Act.....	288
Rhode Island; notice by employer of withdrawal of acceptance of provisions of compensation Act.....	288
Rhode Island; notice by workman of election not to accept provisions of compensation Act.....	289
Texas; notice by employer to employes of adoption of compensation principle.....	292
Texas; notice that an employer has ceased to be a subscriber..	293
Washington; agreement by employers and employes in non-	

FORMS— <i>Continued</i>	PAGE
hazardous employments to adopt the compensation principle . . . . .	294
West Virginia; notice by employer to workmen of election to pay compensation . . . . .	296
Wisconsin; employer's election not to become subject to Compensation Act . . . . .	298
Wisconsin; employer's notice of withdrawal from operation under compensation Act . . . . .	299
Wisconsin; notice of employé upon entering employment of rejection of compensation Act . . . . .	299
—See title of each State.	
FRAUD; minors securing position by misrepresenting age; application of compensation Act . . . . .	133
securing position by false representation; application of compensation Act . . . . .	133
FREEZING; injury arising out of employment . . . . .	275
FROSTBITE; injury arising out of employment . . . . .	375
FUNERAL EXPENSES; Arizona . . . . .	559
California . . . . .	559
Connecticut . . . . .	560
Illinois . . . . .	560
Iowa . . . . .	560
Kansas . . . . .	560
Kentucky . . . . .	1052 p
Maryland . . . . .	560
Massachusetts . . . . .	560
Michigan . . . . .	561
Minnesota . . . . .	561
Nebraska . . . . .	561
Nevada . . . . .	561
New Hampshire . . . . .	561
New Jersey . . . . .	561
New York . . . . .	562
Ohio . . . . .	562
Oregon . . . . .	562
Rhode Island . . . . .	562
Texas . . . . .	562
Washington . . . . .	562
West Virginia . . . . .	563
Wisconsin . . . . .	563

	PAGE
<b>GASES; injuries arising from noxious gases</b> . . . . .	<b>370</b>
<b>GERM OR POISON ENTERING SYSTEM THROUGH BREAK IN SKIN; injury arising out of employment</b> . . . . .	<b>352</b>
<b>GERMAN INSURANCE CODE</b> . . . . .	<b>1885</b>
accident insurance . . . . .	2022
accident insurance; accident associations and other carriers of insurance . . . . .	2043
accident insurance; accident prevention; supervision . . . . .	2092
accident insurance; accident prevention, supervision and regulation . . . . .	2092
accident insurance; administration of the assets . . . . .	2064
accident insurance; administrative bodies of the accident associations . . . . .	2058
accident insurance; agricultural . . . . .	2107
accident insurance; assessments and collections; procedure . . . . .	2072
accident insurance; benefits . . . . .	2028
accident insurance; branch institutes . . . . .	2080
accident insurance; branch institutes for the keeping of riding animals and conveyances . . . . .	2090
accident insurance; branch institutes; insurance at the cost of communes . . . . .	2088
accident insurance; building trades; branch institutes for establishment, scope and organization . . . . .	2080
accident insurance; building trades; premiums; undertakers . . . . .	2083
accident insurance; carriers of the insurance . . . . .	2043
accident insurance; changes in the status of the accident associations . . . . .	2047
accident insurance; classification of risks . . . . .	2122
accident insurance; composition of the accident associations . . . . .	2046
accident insurance; division and joint carrying of the burden . . . . .	2064
accident insurance; employés of associations . . . . .	2059, 2121
accident insurance; formation of risk classes . . . . .	2062
accident insurance; industrial accident insurance . . . . .	2022
accident insurance; introductory law . . . . .	2314
accident insurance; liability of undertakers to accident asso- ciations, sick funds, etc. . . . .	2103
accident insurance; membership in accident associations and the right to vote . . . . .	2050
accident insurance; payment of the compensation . . . . .	2067
accident insurance; payment through the postoffice depart- ment . . . . .	2067



GERMAN INSURANCE CODE— <i>Continued</i>	PAGE
accident insurance; penal provisions . . . . .	2105
accident insurance; procedure before imperial insurance office . . . . .	2282
accident insurance; procedure in assessments and collections . . . . .	2072
accident insurance; public employés . . . . .	2100
accident insurance; raising the fund . . . . .	2068
accident insurance; registration of establishments . . . . .	2050
accident insurance; registry of establishments . . . . .	2051
accident insurance; regulations for preventing accidents . . . . .	2092
accident insurance; relation of accident and invalidity and survivors' insurance . . . . .	2243
accident insurance; relations of the insurance carriers to each other and to other bodies . . . . .	2238
accident insurance; reports of accidents . . . . .	2251
accident insurance; scope of the insurance . . . . .	2022
accident insurance; supervision . . . . .	2066
accident insurance; transferring funds to postoffice depart- ment . . . . .	2079
accident insurance; undertakers and their representatives; liability to injured persons and their survivors . . . . .	2102
accident insurance; undertakers; changes in . . . . .	2053
accident prevention; building operations; special provisions . . . . .	2100
accident prevention; keeping of riding animals and convey- ances; special provision . . . . .	2100
accounting bureau . . . . .	1920
accounts of sick funds . . . . .	1949
administrative authorities . . . . .	1922
administrative bodies . . . . .	1898
agricultural accident insurance . . . . .	2107
agricultural accidental insurance; accident associations and other carriers of the insurance . . . . .	2116
agricultural accident insurance; accident prevention . . . . .	2133
agricultural accident insurance; administration of the assets . . . . .	2122
agricultural accident insurance; benefits . . . . .	2110
agricultural accident insurance; carriers of the insurance . . . . .	2116
agricultural accident insurance; consolidation and other changes in associations . . . . .	2119
agricultural accident insurance; constitution of associations . . . . .	2119
agricultural accident insurance; division and joint carrying of the burden . . . . .	2122
agricultural accident insurance; establishments of the Empire and of the States . . . . .	2134
agricultural accident insurance; funds; how raised . . . . .	2124

## Volume 2 begins at page 1053

GERMAN INSURANCE CODE— <i>Continued</i>	PAGE
agricultural accident insurance; liabilities of undertakers and their representatives . . . . .	2137
agricultural accident insurance; membership and right to vote . . . . .	2117
agricultural accident insurance; organization of associations . . . . .	2117
agricultural accident insurance; payment of the compensation . . . . .	2124
agricultural accident insurance; penal provisions . . . . .	2137
agricultural accident insurance; procedure in assessments and collections . . . . .	2130
agricultural accident insurance; raising of the funds . . . . .	2124
agricultural accident insurance; registration of establishments . . . . .	2118
agricultural accident insurance; regulation by State Legislature . . . . .	2134
agricultural accident insurance; reserves must be accumulated . . . . .	2129
agricultural accident insurance; standard of labor and classification of risk . . . . .	2125
agricultural accident insurance; supervision . . . . .	2123, 2133
agricultural accident insurance; transferring amounts to post-office department . . . . .	2132
agriculture; application of act to . . . . .	1934
analysis of . . . . .	1886
arrears; how collected . . . . .	1903
assets; provisions relating to . . . . .	1902
attorney; fees of . . . . .	2302
benefits; general provisions . . . . .	1938
benefits are not to be charities . . . . .	1924
branch institutes; additional institutions . . . . .	2091
carriers of the insurance . . . . .	1949
carriers of Imperial insurance . . . . .	1897
classification of risks . . . . .	2062
combination or federation of funds . . . . .	1992
committees . . . . .	1910
compulsory insurance . . . . .	1935
consolidation of accident associations . . . . .	2047
costs and fees . . . . .	2302
costs; supervision . . . . .	1915
distribution . . . . .	2291
division of departments . . . . .	1897
earnings . . . . .	1933
employments subject to insurance . . . . .	1933
fees and stamp taxes . . . . .	1928
fees of lawyers . . . . .	2302
fiscal year; same as calendar year . . . . .	1934

## Volume 2 begins at page 1053

GERMAN INSURANCE CODE— <i>Continued</i>	PAGE
foreign compensation laws; application of in Germany . . . . .	1933
fund; how raised . . . . .	2068
general description of . . . . .	7
general provisions . . . . .	1897
home working industries . . . . .	2005
home working industries; application of Act to . . . . .	1934
honorary officers . . . . .	1899
Imperial insurance office . . . . .	1916
Imperial insurance office; composition . . . . .	1916
Imperial insurance office; costs . . . . .	1920
Imperial insurance office; jurisdiction . . . . .	1916
Imperial insurance office; senate . . . . .	1919
inebriates; benefits to . . . . .	1924
insurance authorities . . . . .	1904
insurance authorities; introductory law . . . . .	2303
introductory law; accident insurance . . . . .	2314
introductory law for the workmen's insurance code . . . . .	2303
introductory law; insurance authorities . . . . .	2303
introductory law; invalidity and survivors' insurance . . . . .	2318
introductory law; procedure . . . . .	2323
introductory law; sickness insurance . . . . .	2306
invalidity and survivors' insurance; introductory law . . . . .	2318
invalidity and survivors' insurance; preparation of case by local insurance office . . . . .	2265
invalidity and survivors' insurance; procedure before im- perial insurance office . . . . .	2281
invalidity and survivors' insurance; relation of insurance carriers to each other . . . . .	2242
invalidity and survivors' insurance; submission of claims . . . . .	2264
investigations of accidents; procedure . . . . .	2252
investment of assets . . . . .	1903
lawyers; fees of . . . . .	2302
legal assistance . . . . .	1923
liability for the obligations of the institute . . . . .	2217
local insurance offices . . . . .	1905
local insurance offices; costs . . . . .	1910
local insurance offices; disqualification and rejection of mem- bers of the judgment committee . . . . .	2270
local insurance offices; fine for refusal of person appointed to serve . . . . .	1909
local insurance offices; procedure up to the oral proceedings . . . . .	2272
local insurance offices; representatives; qualification of . . . . .	1908

Volume 2 begins at page 1053

GERMAN INSURANCE CODE— <i>Continued</i>	PAGE
local insurance offices; voting of representatives . . . . .	1907
local wage rate . . . . .	1931
malinger; safeguards against malingering . . . . .	27
medical treatment . . . . .	1925
navigation accident association; accident insurance; penal provisions . . . . .	2325
navigation accident association; administration of the assets . .	2206
navigation accident association; administrative bodies . . . . .	2160
navigation accident association; benefits . . . . .	2142
navigation accident association; carriers of the insurance . .	2154, 2200
navigation accident association; collecting the contributions . .	2227
navigation accident association; consolidation and other changes in the condition of the establishment . . . . .	2157
navigation accident association; constitution of association . . .	2159
navigation accident association; contribution paid through mistake . . . . .	2227
navigation accident association; contributions not valid . . . . .	2225
navigation accident association; contributions; size of . . . . .	2214
navigation accident association; controversies as to contributions . . . . .	2229
navigation accident association; distribution and refunding of the insurance benefits; transferring amounts to postoffice department . . . . .	2217
navigation accident association; expenses of administration . . .	2215
navigation accident association; lump sum settlements . . . . .	2196
navigation accident association; membership and right to vote .	2155
navigation accident association; organization . . . . .	2155
navigation accident association; payment of benefits through the postoffice department . . . . .	2213
navigation accident association; payment of contributions by the insured persons . . . . .	2225
navigation accident association; payment of contributions through the employer; proof of military service and of sickness . . . . .	2222
navigation accident insurance; penal provisions . . . . .	2295
navigation accident association; periods of military service and of sickness . . . . .	2215
navigation accident insurance; procedure . . . . .	2292
navigation accident association; procedure as to contributions . .	2219
navigation accident association; raising fund . . . . .	2213
navigation accident association; receipt cards . . . . .	2219
navigation accident association; registration of establishments . .	2157

## Volume 2 begins at page 1053

GERMAN INSURANCE CODE— <i>Continued</i>	PAGE
navigation accident association; registry of establishments....	2157
navigation accident association; reinsurance federations.....	2217
navigation accident association; representatives.....	2155
navigation accident association; sick funds.....	2234
navigation accident association; special institutes.....	2208
navigation accident association; special provisions for seamen..	2234
navigation accident association; supervision.....	2231
navigation accident association; supervision of special institutes	2212
navigation accident association; suspension of the pension; capital sum settlements.....	2196
navigation accident association; voluntary additional insurance	2232
navigation accident association; withdrawal of the pension....	2195
navigation accident insurance association.....	2292
navigation accident insurance; scope of the insurance.....	2138
navigation insurance association; relation to other claims.....	2198
navigation insurance association; special powers of the insurance institutes.....	2189
notices.....	1928
organization of accident associations.....	2050
penal provisions.....	1929, 2020
penalties.....	1929, 2020
place of employment.....	1932
procedure; accident insurance.....	2251
procedure before local insurance office.....	2269
procedure; decision.....	2258
procedure; decisions of insurance carriers.....	2254
procedure; determination by judge of procedure.....	2269
procedure; determination of benefits.....	2248
procedure; final decisions.....	2263
procedure; general provisions.....	2263
procedure; Imperial insurance office; accident insurance.....	2282
procedure; Imperial insurance office; general provisions.....	2284
procedure; Imperial insurance office; reopening of case.....	2287
procedure; Imperial insurance office; sickness and invalidity and survivors' insurance.....	2281
procedure; insurance carrier; contesting final decision of.....	2291
procedure; introductory law.....	2323
procedure; invalidity and survivor's insurance; decision of the insurance carrier.....	2268
procedure; invalidity and survivor's insurance; renewal of appli- cation.....	2269
procedure; investigation of accidents.....	2252

## Volume 2 begins at page 1053

GERMAN INSURANCE CODE— <i>Continued</i>	PAGE
procedure; local insurance office; oral proceedings . . . . .	2274
procedure; protest . . . . .	2260
procedure; sickness insurance . . . . .	2250
procedure; special; controversies of several insurance carriers in regard to obligation to furnish compensation . . . . .	2290
prohibitions and penalties . . . . .	1929
relation of the insurance carriers to each other; sickness in- surance and accident insurance . . . . .	2238
reports of accidents . . . . .	2251
representatives; qualification of . . . . .	1899
revenues . . . . .	1902
sea-going vessels; German; definition of . . . . .	1934
sickness benefits . . . . .	1939
sickness insurance; administrative bodies of the fund . . . . .	1973
sickness insurance; agricultural occupations . . . . .	1995
sickness insurance; alternative benefits . . . . .	1943
sickness insurance; alternative plans . . . . .	2014
sickness insurance; benefits of equal value . . . . .	1957
sickness insurance; benefits to the family . . . . .	1945
sickness insurance; branches . . . . .	2012
sickness insurance; casual employés . . . . .	2000
sickness insurance; composition of establishment and guild sick funds . . . . .	1973
sickness insurance; consolidation of funds . . . . .	2019
sickness insurance; constitution of associations . . . . .	1971
sickness insurance; contribution to funds . . . . .	1986
sickness insurance; controversies; how determined . . . . .	1957
sickness insurance; domestic service . . . . .	1999
sickness insurance; duties of officers . . . . .	1976
sickness insurance; employés and officials of the fund . . . . .	1977
sickness insurance; establishment and guild sick funds . . . . .	1956
sickness insurance; establishment of sick funds and guild sick funds . . . . .	1953
sickness insurance; federation of funds . . . . .	1992
sickness insurance; funeral benefits . . . . .	1944
sickness insurance; general local sick fund and rural sick fund . . . . .	1949
sickness insurance; general provisions . . . . .	1945
sickness insurance; introductory law . . . . .	2306
sickness insurance; itinerant trades . . . . .	2004
sickness insurance; local and rural sick funds . . . . .	1958
sickness insurance; membership; beginning and termination . . . . .	1968
sickness insurance; minors' sick fund . . . . .	2012

## Volume 2 begins at page 1053

<b>GERMAN INSURANCE CODE—Continued</b>	<b>PAGE</b>
sickness insurance; organization of local and rural sick fund. . . .	1973
sickness insurance; payment of contributions. . . . .	1989
sickness insurance; physicians, dentists, hospitals and pharm- acies; relation to. . . . .	1983
sickness insurance; procedure. . . . .	1961
sickness insurance; procedure before imperial insurance office. .	2281
sickness insurance; registration. . . . .	1970
sickness insurance; relation of insurance carriers to each other	2238
sickness insurance; relation of sickness and invalidity and sur- vivors' insurance. . . . .	2242
sickness insurance; reserves; administration of. . . . .	1982
sickness insurance; scope of insurance. . . . .	1935
sickness insurance; service. . . . .	1999
sickness insurance; special local sick funds. . . . .	1952
sickness insurance; special occupations. . . . .	1994
sickness insurance; substitute funds. . . . .	2014
sickness insurance; supervision. . . . .	1986
special provisions for the protest against changes in permanent pensions. . . . .	2262
stamp taxes. . . . .	1928
state insurance office. . . . .	1920
state insurance office; composition. . . . .	1916
state insurance office; jurisdiction. . . . .	1916
superior insurance offices. . . . .	1911, 2277
superior insurance offices; composition. . . . .	1912
superior insurance offices; establishment. . . . .	1911
supervision. . . . .	1903
supervision; costs. . . . .	1915
temporary employment. . . . .	2000
time limits. . . . .	1926
"undertakers"; definition of. . . . .	1899
voluntary insurance. . . . .	1937
wage rate local. . . . .	1931
<b>GLANDERS; injury arising out of employment. . . . .</b>	<b>358</b>
<b>GOING TO AND FROM PLACE OF EMPLOYMENT; injuries</b> which arise out of employment. . . . .	<b>338, 404</b>
<b>GRADUAL WEARING FROM CONSTANT USE OF PAR-</b> <b>TICULAR MEMBERS; injuries arising out of employment</b>	<b>351</b>
<b>GUARDIAN AD LITEM; when necessary to appoint. . . . .</b>	<b>795</b>
<b>GUN; seaman injured by explosion of; injury arising out of em-</b> <b>ployment. . . . .</b>	<b>515</b>

**H**

	PAGE
HAND; loss of hand when other hand already injured; disability benefits.....	665
HANDCAR; employés transported to and from place of employment on handcar; injury arising out of employment.....	412
HEART DISEASE; developing after temporary total disability....	668
injury arising out of employment.....	363
HEAT STROKE; injury arising out of employment.....	375
HERNIA; injury arising out of employment.....	366
HIGHWAY; accident occurring on while workman on his way to place of employment.....	406
HOLIDAYS; intermittent employment; wages which are basis of compensation.....	741
occurring in period for which compensation is due; disability benefits.....	647
HOSPITAL; disease contracted in after accidental injury arising out of employment.....	397

**I**

ILLEGITIMATE CHILDREN; when dependent.....	581
ILLINOIS; abolition of common-law defenses.....	79, 1165
administration and procedure.....	815
agreements as to compensation claims; presumed fraudulent when made within seven days after injury.....	1181
appeals.....	896
appeal from decision of Industrial Board to Supreme Court....	1178
arbitration committee; appointment of.....	1176
arising out of employment; provision of statute.....	520
assignment of compensation claim.....	1181
attachment of compensation claim.....	1181
blanks to be furnished by Industrial Board.....	1176
commutation of compensation payments.....	953, 1172
compromising compensation claims.....	946
compromising compensation claims; presumed fraudulent when made within seven days after injury.....	1181
computing compensation claim.....	1182
constitutional law; effect of any portion of act being declared unconstitutional.....	1187
contractors and subcontractors; liability to employés of.....	534



ILLINOIS— <i>Continued</i>	PAGE
contractors and subcontractors; rights and liabilities of principal.....	1187
death benefits.....	596, 1167
demand of security for payment of compensation.....	827
dependents; who are.....	596, 1167
disability benefits.....	687, 1168
disfigurement; compensation for.....	1169
election of remedies; claim for compensation; exclusive remedy of employé when employer has adopted compensation principle.....	1167
election of remedy by workman after injury.....	310
election to adopt compensation principle.....	1163
election to adopt compensation principle; how long to continue	1163
“employer”; definition of.....	1165
exemption of compensation claim.....	1181
form; application for adjustment of claim.....	818
form; general release.....	832
form; notice of claim for partial permanent disability after return to work.....	830
form; notice of disputed claim.....	821
form; notice of employé of accidental injury and claim for compensation therefor.....	829
form; petition for lump sum payment.....	826
form; petition for review of agreement or award.....	823
form; petition for review of decision of committee of arbitration.....	822
form; receipt on account of compensation.....	831
form; report of permanent disability.....	834
form; request for appointment of arbitrators.....	821
funeral benefits.....	560, 1168
garnishment of compensation claim.....	1181
incompetents; how claims for compensation made.....	1172
Industrial Board; creation and powers of.....	1175
insurance; effect of act on insurance.....	1184
insurance of compensation.....	966
insurance of compensation claim; requirements of policies.....	1183
insurance of compensation claim; when required.....	1182
insurance; subrogation of employé to rights against insurance company.....	1185
judgment; when entered on decision of Industrial Board.....	1179
limitation; notice of accident.....	1181
limitation; notice of claim.....	1181

ILLINOIS—*Continued*

	PAGE
limitation; time within which notice of review may be filed. . . .	1178
limitation; time within which the agreement or award for compensation may be modified. . . . .	1180
manner of bringing employer and employé under Act. . . . .	288
medical and surgical attention. . . . .	551, 1168
medical attention; failure of employé to follow directions of physician. . . . .	1177
medical examination. . . . .	929, 1174
modification of agreement or award. . . . .	921, 1180
notice by employé of exercise of option to proceed for compensation or for damages. . . . .	828
notice by employer of rejection of compensation principle; form. . . . .	231
notice by employé of rejection of compensation principle; form	232
notice by employers of adoption of compensation principle; form	231
notice of accident; when given. . . . .	1181
notice of injury and claim for compensation; form. . . . .	829, 830
notices of injuries and of claims for compensation. . . . .	773
payments of compensation; when and how made. . . . .	1172
penalty; wilful refusal to obey act. . . . .	1188
physical examination. . . . .	929, 1174
presumption of election to adopt compensation principle. . . . .	1164
procedure on application for compensation. . . . .	1176
procedure; physician; appointment of by Industrial Board. . . . .	1177
question determined by the Industrial Board. . . . .	1176
report by Industrial Board to Governor. . . . .	1180
reports of accident by employers. . . . .	935, 1186
reservation of existing rights of action. . . . .	1187
review of award; stenographic report. . . . .	1178
right of compensation exclusive remedy. . . . .	1174
rules of Industrial Board. . . . .	815 n
securing compensation claims. . . . .	1182
settlement receipt. . . . .	831
texts of Compensation Act. . . . .	1163
third person; injury caused by; procedure and rights of parties. . . . .	1185
to whom Act applies. . . . .	153, 1165
wages which are the basis of compensation payments. . . . .	1173
waiting period. . . . .	544, 1168
waiver of provisions of act prohibited. . . . .	1181
when act becomes effective. . . . .	1188
withdrawal of election to adopt compensation principle. . . . .	1164

	PAGE
INDEPENDENT CONTRACTORS; application of Compensation Acts. . . . .	127
INDUSTRIAL DISEASE; recurrent attacks of. . . . .	675
INFANT; probable earnings of as basis of compensation. . . . .	646
INFECTIONS AND OTHER AILMENTS CONTRACTED BY REASON OF LOWERED VITALITY DUE TO PREVIOUS INJURIES. . . . .	392
INFECTIOUS DISEASES; injury arising out of employment. . . . .	358
INFLAMMATION OF KIDNEYS FROM WADING IN WATER: injuries arising out of employment. . . . .	350
INHALATION OF NOXIOUS GASES; injury arising out of employment. . . . .	370
INJURY; distinction between the word "injury" and the term "accidental injury" . . . . .	339
Michigan act; construction of in relation to meaning of term personal injuries. . . . .	340
what is an "injury" and when does it arise out of the employment. . . . .	339
when term "injury" includes occupational diseases. . . . .	340
INJURIES ARISING OUT OF EMPLOYMENT; distinction between statutes; when word "injury" alone is used instead of words "accidental injury" . . . . .	334
injuries which are the basis of a claim for compensation and when they arise out of and in the course of the employment	331
tuberculosis from traumatism. . . . .	346
—See <i>Arising out of Employment</i> .	
INJURIES BY THIRD PERSONS; when they arise out of the employment. . . . .	338
INJURIES WITHOUT EXTERNAL MANIFESTATION; when they arise out of employment. . . . .	350
INMATE OF WORKHOUSE; when dependent. . . . .	582
INSANITY; injury arising out of employment. . . . .	384
INSECT; sting of; injury arising out of employment. . . . .	514
INSURING COMPENSATION. . . . .	958, 959
Arizona. . . . .	962
California. . . . .	962
Connecticut. . . . .	965
different methods of insuring. . . . .	961

## Volume 2 begins at page 1053

<b>INSURING COMPENSATION—Continued</b>	<b>PAGE</b>
employers' liability policy; limitation of amount. . . . .	961
Illinois. . . . .	966
Iowa. . . . .	969
Kansas. . . . .	972
limitation of amount of policy. . . . .	959
Maryland. . . . .	972
Massachusetts. . . . .	973
Michigan. . . . .	974
Minnesota. . . . .	976
Nebraska. . . . .	978
necessity of insurance. . . . .	960
Nevada. . . . .	980
New Hampshire. . . . .	980
New Jersey. . . . .	980
New York. . . . .	980
Ohio. . . . .	983
Oregon. . . . .	984
policies; restrictions. . . . .	959
right of workman to proceeding against insurer. . . . .	959
Texas. . . . .	984
Rhode Island. . . . .	9
Washington. . . . .	985
West Virginia. . . . .	985
Wisconsin. . . . .	986
<b>INTERSTATE COMPETITION; effect of on schedule of pay-</b>	
<b>ments. . . . .</b>	<b>26</b>
<b>INTERMITTENT EMPLOYMENT; accidents to machinery;</b>	
<b>wages which are basis of compensation. . . . .</b>	<b>741</b>
slackness of trade; wages which are basis of compensation. . . . .	742
wages are basis of compensation. . . . .	739
<b>INTOXICATION; defense of. . . . .</b>	<b>6</b>
serious and wilful misconduct; injury arising out of employ-	
ment. . . . .	480
<b>IOWA; abolition of common-law defenses. . . . .</b>	<b>81, 1191</b>
administration and procedure. . . . .	834
agreements as to compensation filed and approved. . . . .	1209
agreements as to compensation made within twelve days of	
accident presumed fraudulent. . . . .	1206
appropriation of money for Industrial Commissioner's use. . . . .	1209
appeals. . . . .	896
arising out of employment; provision of statute. . . . .	520

IOWA—Continued	PAGE
assaults; excluded from operation of Act.....	1206
attorney's fees; approval of.....	1207, 1212
commutation of claims and awards.....	953, 1202
compensation claim; exclusive remedy of employé.....	1201
compromising compensation claims.....	946
contractors and subcontractors; liability to employés of.....	534
contracts relieving employer from liability under act.....	1196
"court"; definition of.....	1206
death benefits.....	597, 1196
death of employé entitled to compensation; effect.....	1201
dependents; who are.....	597, 1204
disability benefits.....	691, 1199
election of rejection; how long to continue in force.....	1195
election of remedy by workman after injury.....	311
election to adopt compensation principle; presumption.....	1190
"employer"; definition of.....	1204
employé's notice of rejection of compensation principle; form..	235
entry of on report of commissioner or arbitration committee..	1211
examination of books and papers of employer.....	1212
exclusive remedy under Compensation Act.....	1193
fees; attorneys; approval of.....	1207
fees of arbitrators.....	1211
fees of attorneys and physicians; approval of.....	1212
fees; witnesses.....	1209
funeral expenses.....	560
"industrial agreement"; definition of.....	1206
Industrial Commissioner; creation of office and powers and duties of.....	1207
Industrial Commissioner fixing safety standards.....	1206
Industrial Commissioner; must not serve on committee of political party.....	1213
Industrial Commissioner; recommendation to Governor for appointment.....	1213
Industrial Commissioner; removal of from office.....	1214
Industrial Commissioner; report to Governor.....	1209
Industrial Commissioner; review of award of arbitrators.....	1211
Industrial Commissioner; rules and regulations by.....	1209
insurance; agreements that employés pay portion of premiums are void.....	1206
insurance commissions on premiums; limitation.....	1215
insurance of compensation claims.....	969, 1214
insurance of compensation claims; liability to employer.....	1216

Volume 2 begins at page 1053

IOWA—*Continued*

	PAGE
insurance; mutual associations . . . . .	1214, 1215
insurance; requirements as to policies . . . . .	1215, 1216
interstate and intrastate commerce; application of Act to em- ployés engaged in . . . . .	1207
intoxication; injury caused by; effect . . . . .	1193
manner of bringing employer and employé under Act . . . . .	233
medical attention . . . . .	551, 1196
medical examination . . . . .	929, 1201
minor; amount of compensation . . . . .	1199
minor dependents; physically and mentally incapacitated; rights of . . . . .	1201
modification of agreements or awards . . . . .	921, 1212
notice by employer of rejection of compensation principle; form . . . . .	234
notice of election to reject act . . . . .	1192
notice of injury; how and when given . . . . .	1196
notice of rejection by employé . . . . .	1194
notices of injuries and of claims for compensation . . . . .	774
oaths; administration of; by whom taken . . . . .	1195
penalty; requiring employé to pay portion of insurance pre- mium . . . . .	1206
"personal injury arising out of and in course of such employ- ment;" definition of . . . . .	1205
physical examination . . . . .	929, 1201
physicians; approval of fees . . . . .	1212
presumption of election to adopt compensation principle . . . . .	1191
procedure; arbitrators; how and when appointed . . . . .	1210
procedure; arbitrator; fees of . . . . .	1211
procedure; determining claims for compensation; practice be- fore Industrial Commissioner . . . . .	1209
procedure; entry of judgment upon decision of commissioner or of arbitration committee from which no claim for review has been filed . . . . .	1211
procedure; filing and approval of agreements as to compensation . . . . .	1209
procedure; medical examination; fees for . . . . .	1210
procedure; shall be summary under Act . . . . .	1209
rejection of Act . . . . .	1190
rejection of Act by employé; effect . . . . .	1193
rejection of Act by employer and employé; effect . . . . .	1196
rejection of Act; when effective . . . . .	1196, 1217
reports of accidents by employers . . . . .	935, 1212
safety standards fixed by Industrial Commissioner . . . . .	1206

<b>IOWA—Continued</b>	<b>PAGE</b>
service of notices; how made.....	1212
successive injuries; how compensated.....	1204
text of Compensation Act.....	1190
third person; injury caused by; rights and liabilities of the parties.....	1196
to whom Act applies.....	156, 1190
wages which are basis of compensation payments.....	750, 1202
waiting period.....	544, 1099
when Act takes effect.....	1217
wilful intention to cause injury; effect.....	1193
witness fees.....	1209
“workman”; definition of.....	1204

## J

<b>JOINT EMPLOYERS OF SAME WORKMAN.....</b>	<b>112</b>
<b>JOKES; workman playing practical jokes; injury arising out of employment.....</b>	<b>511</b>
<b>JURY TRIAL; abolition of.....</b>	<b>791</b>

## K

<b>KANSAS; abolition of common-law defenses.....</b>	<b>82, 1235, 1236</b>
administration and procedure.....	835
administration; when necessary.....	1225
agreements as to compensation.....	1225, 1228
agricultural pursuits; excluded from operation of Act.....	1220
alternative schemes of compensation; when allowed.....	1233, 1234
appeals.....	897
arbitration; procedure and fees relating to.....	1229
arising out of employment; provision of statute.....	520
“arising out of and in the course of employment”; definition of.....	1222
assignment of compensation payments.....	1226
attorney’s fees, approval of.....	1226, 1233
“building work”; definition of.....	1222
commutation of compensation payments.....	953, 1231, 1232
compromising compensation claims.....	946
contractors and subcontractors; liability to employes of.....	535
contractors and subcontractors; rights and liabilities of parties.....	1219
death benefits.....	599, 1223
deliberate intention to cause injury or wilful failure to use guard; effect.....	1218

KANSAS—*Continued*

	PAGE
dependents . . . . .	599, 1222
disability benefits . . . . .	694, 1224
election of remedy by workman after injury . . . . .	312
election to adopt compensation principle; presumption . . . . .	1235
"electrical work"; definition of . . . . .	1221
"employer"; definition of . . . . .	1222
"engineering work"; definition of . . . . .	1222
exemption of compensation payments . . . . .	1226
"factory"; definition of . . . . .	1221
fees of arbitrators . . . . .	1229
fees of attorneys; approval of . . . . .	1226, 1233
funeral benefits . . . . .	560, 1224
incompetents; provisions relating to . . . . .	1223
insurance; staying proceedings upon award by furnishing policy or bond . . . . .	1231
insuring compensation . . . . .	972
insurance of compensation claims; subrogation of insurer to rights and liability of employer . . . . .	1232
interstate commerce; employes engaged in application of Act judgments upon awards . . . . .	1220 1231
limitation; cancelation and modification of agreements and award . . . . .	230, 1231
limitation; notice of accident and claim . . . . .	1228
limitation; when a cause of action is presumed to accrue . . . . .	1233
manner of bringing employer and employé under Act . . . . .	238
medical attendance and burial . . . . .	551, 1224
medical examination . . . . .	929, 1226, 1227, 1228
"members of a family"; definition of . . . . .	1222
"mine"; definition of . . . . .	1221
minors; provisions relating to . . . . .	1223
modification of agreements and award . . . . .	921, 1230
notice by employé of rejection of compensation principle; form . . . . .	240
notice by employé of withdrawal of notice of rejection of Act; form . . . . .	241
notice by employer employing less than five workmen to adopt the compensation principle; for . . . . .	240
notice by employer of rejection of compensation principle; form . . . . .	239
notice by employer of withdrawal of rejection of compensa- tion principle; form . . . . .	239
notice of accident and claim; when and how given . . . . .	1228



KANSAS—*Continued*

	PAGE
notices of injuries and of claims for compensation.....	774
payments of compensation claims; when and where made....	1225
physical examination.....	929, 1226, 1227, 1228
procedure; actions by employ�es against defaulting employers	1232
procedure; agreements as to compensation.....	1225
procedure; arbitration.....	1229
procedure; cancelling agreements and award.....	1230
procedure; courts to make rules.....	1232
procedure; filing agreements and award.....	1230
procedure; form of agreement and award.....	1230
procedure; judgments upon agreement or award.....	1231
“quarry”; definition of.....	1222
“railway”; definition of.....	1221
repealing Act.....	1236
reports of accidents by employers.....	1226
reports of injuries by employers.....	935
reviewing agreements or awards.....	1231
third party causing injury; rights and liabilities of parties....	1219
to whom Act applies.....	160, 1220
wages which are basis of compensation.....	751, 1229
waiting period.....	544, 1218
when Act became effective.....	1236
“workman”; definition of.....	1222
 KENTUCKY; abolition of common-law defenses.....	 1052 n
abolition of defenses; employers who have elected not to adopt compensation principle or are in default in paying pre- miums.....	 1052 o
actions to enforce penalties; by whom brought.....	1052 y
actions by Board; how brought.....	1052cc
agreements waiving rights under Compensation Act.....	1052 v
agricultural employ�es; Act does not apply to.....	1052 e
appeals; when allowed from decision of Workmen’s Compen- sation Board.....	 1052 v
assignment of compensation claims.....	1052 u
blanks; Workmen’s Compensation Board to furnish.....	1052 d
books and papers; inspection of.....	1052 w
casual employers; Act does not apply to.....	1052 d
classification of industries; reclassification; when to be made	1052 h
classification of industries within provisions of Act.....	1052 e
classification of risks; regulations where employ�es in several classifications in one establishment.....	 1052 z

Volume 2 begins at page 1053

KENTUCKY— <i>Continued</i>	PAGE
commutation of compensation payments.....	1052 u
death benefits.....	1052 r
death benefits; dependents; apportionment of compensation among.....	1052 s
dependents; who are.....	1052 s
disability benefits.....	1052 p
domestic servant; Act does not apply to.....	1052 d
election of remedies; action for damages bars claim for com- pensation.....	1052 p
election of remedy after accident.....	1052 m
election of remedies; third party causing injury.....	1052 z
election of remedy; claim for compensation bars right to sue for damages.....	1052 p
election to adopt compensation principle after having rejected it.....	1052 n
election to adopt compensation principle; presumption....	1052 m
employé; does not include member of firm or officer of cor- poration.....	1052 e
evidence; deposition to take testimony of witnesses outside of the State.....	1052 d
evidence; transcribed copy of stenographer's minutes.....	1052 d
evidence; Workmen's Compensation Board not bound by com- mon law or statutory rules of evidence.....	1052 v
examination of employers by Workmen's Compensation Board.....	1052 h
exemption of compensation claims.....	1052 u
extra-territorial effect of Act; limited to injuries received in the State.....	1052 o
farm laborers; Act does not apply to.....	1052 e
fees of witnesses and officers.....	1052 c
fraudulent representations to Board; penalty.....	1042 w
funeral expenses.....	1052 p
insurance of compensation claim; employer carrying his own insurance.....	1052 aa
insurance of compensation claims; premiums; how deter- mined; limitation on amount.....	1052 h
insurance of compensation claims; right of employer to in- sure.....	1052 aa
interstate and intrastate employés regulations concern- ing.....	1052 x
intoxication; effect of on claim for compensation.....	1052 p
limitation; when claim for compensation must be made....	1052 bb

KENTUCKY—*Continued*

PAGE

manner of bringing employer and employé under provisions of Act.....	1052 l
medical attention.....	1052 o
medical examination.....	1052 w
minor; when deemed <i>sui juris</i> .....	1052 v
minors; provisions relating to.....	1052 t
modification of claims and awards.....	1052 u
notice by employers to Workmen's Compensation Board as to employés, etc.....	1052 h
penalties; additional compensation for fault in performing a duty which cannot be delegated.....	1052 t
penalties; failure of employers or physicians to report injuries to employé.....	1052 x
penalty; deducting insurance premiums from wages.....	1052 w
penalty; fraudulent representations to Board.....	1052 w
penalty; violation of statutory safety regulation.....	1052 t
physical examination.....	1052 w
preference of compensation claims.....	1052 y
premium rates and classification; publication of.....	1052 z
premiums for insurance; limitation on amount.....	1052 h
premiums for insurance; readjustment.....	1052 h
presumption of election to adopt compensation principle...	1052 m
privileged communication; reports of employers to Workmen's Compensation Board.....	1052 i
procedure; investigation and decision of claims against employer carrying his own risk.....	1052 aa
procedure; power of Board to hear disputes relating to compensation claims.....	1052 v
publication of premium rates and classification.....	1052 z
report by Workmen's Compensation Board to Governor....	1052 y
reports by employers of injuries.....	1052 x
reports by employers to be made annually to Workmen's Compensation Board concerning number of employés, etc.....	1052 i
self-inflicted injury; effect of on claim for compensation....	1052 o
State insurance fund; deposit and investment of surplus....	1052 k
State insurance fund; establishment of.....	1052 j
State insurance fund; premium rates; how adjusted.....	1052 j
State insurance fund; premiums; when paid.....	1052 k
State insurance fund; readjustment of premium payments..	1052 l
State insurance fund; treasurer custodian of.....	1052 k
successive injuries; regulations concerning.....	1052 u

KENTUCKY— <i>Continued</i>	PAGE
third party causing injury; rights and liabilities of parties . . .	1052 z
to whom Act applies . . . . .	1052 d 1052 e
wages which are the basis of compensation . . . . .	1052 t
waiting period . . . . .	1052 p
waiving notice of rejection of Act . . . . .	1052 m
waiving rights under Compensation Act . . . . .	1052 v
when Act takes effect . . . . .	1052 aa, 1052 bb
wilful misconduct; effect of on claim for compensation . . .	1052 o
witnesses; deposition to take testimony out of the State . . .	1052 d
witnesses; fees of . . . . .	1052 c
Workmen's Compensation Board; creation of; how consti- tuted . . . . .	1052 a
Workmen's Compensation Board; expenses of; how paid . . .	1052 a
Workmen's Compensation Board; oaths; power to administer	1052 c
Workmen's Compensation Board; officers of the State; must take constitutional oath . . . . .	1052 cc
Workmen's Compensation Board; organization and powers of	1052 b
Workmen's Compensation Board; quorum . . . . .	1052 b
Workmen's Compensation Board; rules; powers to make . . .	1052 c
Workmen's Compensation Board; seal and sessions of . . .	1052 a
Workmen's Compensation Board; witnesses; power to compel attendance of . . . . .	1052 c

L

LAW WRITER; is workman . . . . .	107
LEAD POISONING; blister on finger; injury arising out of em- ployment . . . . .	356
injury arising out of employment . . . . .	373
not an accidental injury within the meaning of the Federal Act . . . . .	342
LEGS; injuries to; disability benefits . . . . .	666
LIGHTNING STRIKING WORKMAN; injury arising out of employment . . . . .	515
LIMITATION; workman injured before Act takes effect but dies after statute effective . . . . .	133
—See title of each State	
LOCKJAW; injury arising out of employment . . . . .	354
LONGSHOREMAN; wages which are basis of compensation; when employed by several employers . . . . .	733
LOSS OF ONE EYE; disability benefits . . . . .	659

	PAGE
LOSS OF USE OF FINGERS WITHOUT AMPUTATION....	656
LOWERED VITALITY; infections and other ailments contracted by reason of lowered vitality due to previous injuries..	392

## M

MAD DOG; bite by; injury arising out of employment.....	513
MALINGERING; encouragement of by liberal scale of compensation.....	27
MANITOBA; agreements as to compensation claims.....	1658
agreements as to compensation; recording.....	1675
agricultural employ�es not included in Act.....	1665
alternative scheme; when allowed.....	1660, 1661
appeals to Court of Appeal.....	1674
apportionment of compensation claims among dependents....	1670
arbitrator; death of; subsequent proceedings.....	1674
assignment of compensation claims.....	1672, 1673
attorney general; power of to make orders and rules.....	1677
average weekly earnings; definition of.....	1667, 1668
bankruptcy of employer; right of workman against insurer....	1662
claim for compensation.....	1658, 1659
commutation of compensation claims.....	1663, 1672
commutation of compensation payments; recording agreements relating to.....	1676
contracting out.....	1660, 1661
contractors and subcontractors; rights and liabilities of parties.....	1661, 1662
costs; when allowed and the amount of.....	1674
costs; when compensation paid into court.....	1676
county courts; duties of officers....	1676
county courts; jurisdiction of..	1666
death benefits.....	1666
death benefits; dependent's; apportionment among of compensation payments.....	1670
dependents; definition of.....	1656
disability benefits.....	1667
domestic servants not covered by Act.....	1665
drunkenness; effect of on rights of compensation.....	1657
election of remedy after accident; wilful act of employer.....	657
election of remedy; effect of bringing action for damages.....	1664
emergency; attempting to save life of fellow workman.....	1658
employer; definition of.....	1655

---

 Volume 2 begins at page 1053
 

---

MANITOBA— <i>Continued</i>	PAGE
exemption of compensation claims . . . . .	1672, 1673
farm laborers not included under Act . . . . .	1665
fees of court . . . . .	1676
incompetents; payment of compensation claims to . . . . .	1669
insolvency of employer; right of workman against insurer . . . . .	1662
insurance of compensation claims; when insurer becomes directly liable to workman . . . . .	1662, 1663
insurance of compensation claims; when workman can recover against insurer direct . . . . .	1664, 1665
intoxication; effect of on right of compensation . . . . .	1657
limitation; claim for compensation . . . . .	1658, 1659
limitation; notice of injury . . . . .	1658
lump sum payment . . . . .	1672
medical examination . . . . .	1669, 1670, 1671
medical referee . . . . .	1671
medical referee; appointment of . . . . .	1672
medical referee; submission of question to . . . . .	1677
"member of family"; definition of . . . . .	1656
modification of compensation awards . . . . .	1672
notice of injury; . . . . .	1658
outworker; definition of . . . . .	1656
payment of compensation; how and where made . . . . .	1669, 1676
penalties under mining act; effect of Compensation Act on . . . . .	1658
physical examination . . . . .	1669, 1670, 1671
preference of compensation claims . . . . .	1663
procedure; arbitration of compensation claims; provisions relating to . . . . .	1673
procedure; arbitration; settlement of disputed questions by . . . . .	1670
procedure; medical referee; when to sit with court as an assessor . . . . .	1674
procedure; submission of question of law to a judge . . . . .	1673
public corporations; application of Act to . . . . .	1656
recording decisions of arbitrator . . . . .	1674, 1675
recording of compensation claims . . . . .	1675
recording redemption agreements . . . . .	1676
reviewing compensation payments . . . . .	1672
rules of court relating to arbitration; publication of . . . . .	1673
serious and wilful misconduct; effect of on rights of compensa- tion . . . . .	1657
service of notices of injury and of claims for compensation . . . . .	1659
text of Compensation Act . . . . .	1655
third parties causing injury; rights and liabilities of parties . . . . .	1663, 1664
to whom Act applies . . . . .	1655

<b>MANITOBA—Continued</b>	<b>PAGE</b>
wages which are the basis of compensation.....	1667, 1668
waiting period.....	1657
waiving rights under Act.....	1664
workman; definition of.....	1655
 <b>MANNER OF BRINGING EMPLOYERS AND EMPLOYÉES UNDER THE ACT.....</b>	 <b>207</b>
Arizona.....	211
California.....	213
California; notice by employer of rejection of compensation principle; form.....	215
California; notice of election by employer to adopt the com- pensation principle; form.....	214
Connecticut.....	216
Connecticut; employer's refusal to adopt compensation princi- ple; notice; form.....	219
Connecticut; notice by employé to employer of refusal to adopt compensation principle form.....	222
Connecticut; notice by employé to employer of withdrawal of compensation principle; form.....	226
Connecticut; notice by employer of refusal to adopt compensa- tion principle; form.....	220
Connecticut; notice by employer to employé of refusal to adopt compensation; form.....	221
Connecticut; notice of employer to employé of withdrawal of acceptance of compensation principle; form.....	226
Connecticut; withdrawal of acceptance of compensation princi- ple by employé; form.....	224
Connecticut; withdrawal of acceptance of compensation princi- ple by employer; form.....	223
Illinois.....	228
Illinois; notice by employé of rejection of compensation princi- ple; form.....	232
Illinois; notice by employer of rejection of compensation princi- ple; form.....	231
Illinois; notice by employer of rejection of compensation princi- ple; form.....	231
Iowa.....	233
Iowa; employé's notice of rejection; form.....	235
Iowa; notice by employer of rejection of compensation princi- ple; form.....	234
Kansas.....	238

Volume 2 begins at page 1053

MANNER OF BRINGING UNDER ACT— <i>Continued</i>	PAGE
Kansas; notice by employé of withdrawal of notice of rejection of Act; form . . . . .	241
Kansas; notice by employer employing less than five workmen of adoption of compensation principle; form . . . . .	240
Kansas; notice by employer of rejection of compensation principle; form . . . . .	239, 240
Kansas; notice by employer of withdrawal of rejection of compensation principle; form . . . . .	239
Kentucky . . . . .	1052 1
Maryland . . . . .	241
Massachusetts . . . . .	242
Massachusetts; notice of claim of common law rights; form . . . .	244
Massachusetts; notice of waiver of rights under common law previously claimed; form . . . . .	244
Massachusetts; notice to employés; form . . . . .	243
Michigan . . . . .	245
Minnesota . . . . .	251
Nebraska . . . . .	255
Nevada . . . . .	263
New Hampshire . . . . .	268
New Jersey . . . . .	269
New York . . . . .	272
Ohio . . . . .	275
Oregon . . . . .	279
Rhode Island . . . . .	286
Texas . . . . .	290
Washington . . . . .	293
West Virginia . . . . .	295
Wisconsin . . . . .	297
acceptance of compensation principle as to part only of employés . . . . .	210
 MARYLAND; abolition of defenses . . . . .	 86
Act of 1902; declared unconstitutional . . . . .	9
administration and procedure . . . . .	836
appeals . . . . .	897
arising out of employment; provision of statute . . . . .	521
blank forms of contract to be prepared by Insurance Commissioner . . . . .	1243
commutation of claims and awards . . . . .	953
compromising compensation claims . . . . .	946
contract of insurance of compensation claims . . . . .	1237



MARYLAND— <i>Continued</i>	PAGE
contracts to adopt compensation principle . . . . .	1237
contractors and subcontractors; liability to employ�es of . . . . .	536
death benefits . . . . .	608, 1238-9
dependents; who are . . . . .	601, 1238, 1239
disability benefits . . . . .	694, 1239
discontinuance of insurance fund; procedure . . . . .	1238
election of remedy by workman after injury . . . . .	313
embezzlement of insurance premiums; penalty . . . . .	1241
funeral expenses . . . . .	560, 1239
Insurance Commissioner; inspection of books of insurance fund . . . . .	1238
insurance of compensation claims . . . . .	972
insurance of compensation claims; appointment of treasurer to hold fund . . . . .	1241
insurance of compensation claims; cancellation of policy . . . . .	1241
insurance of compensation claims; filing copy of contract with Insurance Commissioner . . . . .	1242
insurance of compensation claims; how premiums deducted from wages . . . . .	1241
insurance of compensation claims; premiums; by whom paid . . . . .	1240
intoxication; injury arising out of employment . . . . .	1238
limitation; death must occur within twelve months after acci- dent . . . . .	1238
lump sum payments; when made . . . . .	1239
manner of bringing employer and employ�� under act . . . . .	241, 1237
medical attention . . . . .	1239
medical examination . . . . .	929
modifying awards . . . . .	921
notices of injuries and of claims for compensation . . . . .	775
notice of injury . . . . .	1240
payments; how made . . . . .	1239
penalty; failure to file contract with Insurance Commissioner . . . . .	1242
physical examination . . . . .	929
procedure; arbitration of compensation claims . . . . .	1242
repealing clause . . . . .	1243
report by employer of settlements and payments of insurance benefits . . . . .	1243
reports of injuries by employers . . . . .	935
requirement that employ�� enter contract as condition of em- ployment . . . . .	1243
safety regulations; effect of failure to adopt . . . . .	1242
termination of employment; effect on right to compensation . . . . .	1242

MARYLAND— <i>Continued</i>	PAGE
text of Act.....	1237
to whom Act applies.....	164
wages which are basis of compensation.....	752
waiting period.....	544, 1240
when act takes effect.....	1243
wilful and deliberate act; injury arising out of employment....	1238
ASSACHUSETTS; abolition of common law defenses.....	87, 1244
administration and procedure.....	836
agreements as to compensation claims.....	1254
agreements as to compensation; what to contain; filing; ap- proval.....	1252
appeals.....	897
appeal to Supreme Judicial Court; practice.....	839 n
appeals; exceptions do not lie as general rules of equity govern appeals.....	897 n
arbitration; Industrial Accident Board has no authority to con- sider cases not under Compensation Act.....	840 n
arbitrators; fees of.....	1252
arbitrators; appointment and oath of.....	1251, 1252
arising out of employment; provision of statute.....	521
arising out of employment; assault; fight between two workmen	509
arising out of employment; assault by drunken co-employé....	399
arising out of employment; assault; workman injured by intox- icated fellow-employé.....	506
arising out of employment; assault; bartender stabbed by irate customer.....	507
arising out of employment; salesmen injured while away from master's premises.....	452
arising out of employment; workman injured at mealtime....	446
arising out of employment; motorman injured while riding to work on car used for transportation of mail.....	428
arising out of employment; workman injured while leaving place of employment by means of a common stairway....	423
arising out of employment; plumber's assistant driving from place of work to shop; thrown out of wagon.....	412
arising out of employment; transferring workman to and from place of employment.....	408
arising out of employment; meaning of term.....	399
"association"; definition of.....	1260
attorneys, fees of; approval.....	1253
average weekly wages; definition of.....	1260

## Volume 2 begins at page 1053

MASSACHUSETTS— <i>Continued</i>	PAGE
books and records; how examined.....	1251
claim for compensation; form and substance.....	1249
commutation of compensation claim.....	953, 1249
commutation of claims and awards; payments must have continued for at least six months.....	953 n
compromising compensation claims.....	947
compromising claims and awards; right of a widow is separate from that of a husband and release at common law does not deprive her of claim.....	953 n
contractors and subcontractors; provisions relating to.....	1254
contractors and subcontractors; liability to employes of.....	537
costs; when awarded against a party.....	1253
court; meaning of word as used in Compensation Act.....	840 n
death benefits.....	602, 1245
death benefits; dependents; division of payments due to different dependents.....	604 n
death benefits; dependents; father.....	603 n
death benefits; dependents; husband and wife; living apart before death of husband.....	579
death benefits, dependents; mother.....	603 n
defense of action by employer when serious and wilful misconduct charged against him.....	1245
dependents.....	602, 1246
dependents; apportionment of compensation among.....	839 n
dependents; wife living part from husband before his death.....	579
dependents; child as dependent when husband and wife separated before his death.....	579
"dependents"; definition of.....	1260
dependents; right to deduct compensation due to widow; additional compensation paid to employé.....	584
dependents; right of dependent to compensation; vested interest which passes to representatives.....	586
disability benefits.....	695, 1246
disability benefits; compensation for one day.....	647
disability benefits; double compensation.....	676
disability benefits; injuries to and loss of fingers, not otherwise classified.....	658
disability benefits; injury to eye; payment of compensation pending surgical and medical treatment.....	661
disability benefits; one eye so injured that both cannot be used.....	664
disability benefits; outside insurance not taken into consideration.....	1248

MASSACHUSETTS— <i>Continued</i>	PAGE
domestic servants; Act does not apply to.....	1244
double compensation; when awarded; repayment by employer to insurance association.....	1245
election of remedy by workman after injury.....	313
election of remedy by workman after injury; effect on right to sue for common law damages for death, of refusal of work- man to adopt compensation principle.....	314
election of remedies by workman after injury; effect of letter claiming damages as election.....	314
"employé"; definition of.....	1260
"employer"; definition of.....	1260
Employers' Liability Act; application of under compensation statute.....	1244
Employés' Insurance Association; approval of premiums and withdrawal of approval by Insurance Commissioner.....	1261
Employés' Insurance Association; creation and powers of.....	1255
evidence; declarations of deceased employé in proceedings by dependents.....	840 n
farm laborers; act does not apply to.....	1244
fees of attorneys; approval.....	1253
fee of physician making examination.....	1252
fees of physicians; approval.....	1253
fees of witnesses.....	1251
form; agreement in regard to compensation.....	838
form; application for review of claim before full board.....	841
form; appointment of next friend of minor.....	841
form; notice of application for adjustment of claim.....	850
form; notice to Industrial Accident Board that an injured employé has refused to submit himself to an examina- tion.....	930
form; receipt on account of compensation.....	840
funeral expenses.....	560, 1260
incompetents; provisions as to.....	1248
Industrial Accident Board; creation and powers of.....	1250
Industrial Accident Board; rules; power to make.....	1250
Industrial accidents and occupational diseases; appointment of board to investigate.....	1265
injury arising out of employment; construction of by Indus- trial Accident Board.....	346
insuring compensation claims.....	973, 1255
insuring of compensation claims; may be effected by any com- pany authorized to do business in State.....	1261

MASSACHUSETTS— <i>Continued</i>	PAGE
judgment; when entered on finding of arbitration committee or Industrial Accident Board.....	1252, 1253
limitation; claim for compensation.....	1249
limitation; notice by employer and employé of rejection of compensation principle.....	1244
limitation; notice of injury and claim for compensation.....	1248
limitation; review of finding of arbitration committee.....	1252
manner of bringing employer and employé under act.....	242, 1244
medical and hospital benefits.....	552, 1245
medical examination.....	930, 1249, 1252
minors; provisions as to.....	1248
modification of award.....	922, 1253
municipal employés made subject to act by compulsion.....	1262
notice of waiver of rights under common law previously claimed; form.....	244
notice of claim of common-law rights; form.....	244
notice by employers to employés of adoption of compensation principle; form.....	243
notice of injury and of claim for compensation.....	775, 1248
notice of injury; service of.....	1249
notice of injury; when failure to give notice is excused.....	1249
notice of rejection of compensation principle.....	1244
penalty; failure of employer to report injuries to employés....	1255
physical examination.....	930, 1249, 1252
physicians; fee of when making examination.....	1252
physicians; fees of; approval.....	1253
procedure.....	1250
procedure; agreements as to compensation; what to contain; fil- ing; approval.....	1251
procedure; arbitrators; appointment and oath of.....	1251, 1252
procedure; Industrial Accident Board; review of finding of arbitration committee.....	1252
procedure; judgment; when to be entered upon finding of arbitration committee or Industrial Accident Board..	1252, 1253
procedure; review of finding of committee of arbitration.....	1252
public employés made subject to Act by compulsion.....	1262
referendum to determine whether public employés shall come under Act.....	1263
rejection of compensation principle; how made.....	1244
repealing Act.....	1261
reports of injuries by employer and compensation payments	935, 1254, 1255

Volume 2 begins at page 1053

MASSACHUSETTS—*Continued*

PAGE

serious and wilful misconduct; failure to use goggles in accordance with printed rules . . . . .	489
serious and wilful misconduct; failure to use certain steel guys while at work on steel tower . . . . .	489
serious and wilful misconduct; injury caused by intoxicated condition of employé . . . . .	488
serious and wilful misconduct of employer; double compensation . . . . .	1245
State employés made subject to act by compulsion . . . . .	1262
subrogation; when injury caused by third party . . . . .	1253
"subscribe"; definition of . . . . .	1260
Sundays, holidays and shutdowns occurring in period for which compensation is due . . . . .	647
text of Compensation Act . . . . .	1244
third party causing injury; rights and liabilities of parties . . .	1253
to whom Act applies . . . . .	165
wages which are the basis of compensation . . . . .	753, 1260
wages which are basis of compensation; longshoreman employed by several employers . . . . .	733
wages which are basis of compensation; clothing, gratuities, etc., must be considered . . . . .	753 n
wages which are basis of compensation; overtime earnings . . .	754 n
wages which are basis of compensation; wages of fellow-employé equally competent in same grade as basis . . . . .	754 n
wages which are basis of compensation; how determined . . . .	754 n
wages which are basis of compensation; elevator attendant portion of time and watchman the remainder of time employed	753 n
waiting period . . . . .	545, 1245
waiting period; computing; consecutive or non-consecutive days	646
waiver of common-law rights by filing claim or accepting compensation . . . . .	1259
waiving rights under Act . . . . .	1249
waiver of rights under common law . . . . .	1244
when Act takes effect . . . . .	1261
witnesses; examination of books and records . . . . .	1251
witnesses, fees of . . . . .	1251

MASTER AND SERVANT; acceptance of compensation principle

as to part only of employés . . . . .	210
actors . . . . .	120
apprentice serving without pay; application of Compensation Act . . . . .	117

MASTER AND SERVANT— <i>Continued</i>	PAGE
boarding mistress of construction crew; application of Compensation Act.....	118
charitable organizations; persons employed by out of charity..	119
conductor on railroad employing assistant; emergency.....	117
how relation created.....	109
independent contractors and subcontractors; application of Compensation Act.....	127
joint employers of same workman.....	112
minors securing position by misrepresenting age.....	133
national guardsman; application of Compensation Act.....	120
partners; application of Compensation Act.....	121
policeman injured while acting as fireman; application of Compensation Act.....	120
securing position by false representations.....	133
taxi-cab drivers; cabs operated on shares; application of Compensation Act.....	125
share-workers on vessels; application of Compensation Act...	121
student of manual training school employed on holiday; application of Compensation Act.....	118
teamsters; when employer liable for compensation.....	113
workman employing assistant or substitute; when Acts apply..	115
workman temporarily in service of other than regular employer	110
MEALTIME; injuries during; arising out of employment.....	444
MEDICAL ATTENTION; Arizona.....	549
California.....	549
Connecticut.....	550
Illinois.....	551
Iowa.....	551
Kansas.....	551
Kentucky.....	1052 o
Massachusetts.....	552
Michigan.....	553
Minnesota.....	553
Nebraska.....	554
New Hampshire.....	554
New Jersey.....	554
New York.....	555
Ohio.....	555
Oregon.....	556
refusal of workman to permit operation to be performed; injury arising out of employment.....	396

Volume 2 begins at page 1053

<b>MEDICAL ATTENTION—<i>Continued</i></b>	PAGE
Rhode Island . . . . .	556
Texas . . . . .	556
Washington . . . . .	557
West Virginia . . . . .	557
Wisconsin . . . . .	558
<b>MEDICAL EXAMINATION . . . . .</b>	925
Arizona . . . . .	928
California . . . . .	928
Connecticut . . . . .	929
Illinois . . . . .	929
Iowa . . . . .	929
Kansas . . . . .	929
Kentucky . . . . .	1052 w
Maryland . . . . .	929
Massachusetts . . . . .	930
Michigan . . . . .	930
Minnesota . . . . .	930
Nebraska . . . . .	931
Nevada . . . . .	931
New Hampshire . . . . .	931
New Jersey . . . . .	931
New York . . . . .	931
Ohio . . . . .	932
Oregon . . . . .	932
Rhode Island . . . . .	932
Texas . . . . .	932
Washington . . . . .	932
West Virginia . . . . .	933
Wisconsin . . . . .	933
—See <i>Physical Examination</i> .	
<b>MEDICAL REFEREE; cause of death submitted to . . . . .</b>	926
report of not conclusive on arbitrator . . . . .	928
<b>MEDICAL TREATMENT; condition due to; injury arising out of     employment . . . . .</b>	394
<b>MENTAL SHOCK OR FRIGHT; injury arising out of employment</b>	380
<b>MICHIGAN; abolition of defenses . . . . .</b>	88, 1269
administration and procedure . . . . .	842
appeals . . . . .	897
appeals to Supreme Court . . . . .	844 n
appropriations for Industrial Accident Board . . . . .	1293



Volume 2 begins at page 1053

MICHIGAN— <i>Continued</i>	PAGE
arbitrators; fees of.....	1283
arising out of employment; chief engineer traveling from place to place.....	453
arising out of employment; eye troubles; injury due to disease rather than any accidental injury.....	515
arising out of employment; provision of statute.....	521
arising out of employment; unnecessarily going to place of danger.....	443
arising out of employment; workman injured at mealtime....	449
arising out of employment; workman running to time clock after whistle blew; slipping and falling.....	422
assignment of compensation claim.....	1279
attorney's fees; approval.....	1283
"average weekly wages"; definition of.....	1276
blanks to be furnished by Industrial Accident Board.....	1281
books and records of employer open to inspection of Commissioner.....	1290
claim as to compensation.....	1278
Commissioner of Insurance; administration of State Insurance Fund.....	1287, 1288, 1289
commutation of compensation payments.. 844, n; 954, 1279, 1286	
compromising compensation claims.....	947
constitutional law; effect of declaration that certain portions of act are unconstitutional.....	1292, 1293
construction of Act as relating to meaning of term "personal injury".....	340
contractors and subcontractors; liability to employes of....	537
contracts waiving rights under Compensation Act.....	1279
costs; when allowed and in what amounts.....	1283
death benefits.....	606, 1273
death benefits; place of payment.....	606 n
death benefits; State institution; payments included as part of current expenses.....	606 n
death of employe entitled to compensation; effect of.....	1277
dependents; who are.....	606, 1273, 1274
dependents; wife and minor child separated from husband and father before his death.....	580
depositing present value of compensation claims.....	1286, 1287
disability benefits.....	697, 1274, 1275, 1276
disability benefits; amputation of fingers when wound healing	655
disability benefits; consecutive and not concurrent payments for temporary disability and specific indemnity.....	654

Volume 2 begins at page 1053

MICHIGAN— <i>Continued</i>	PAGE
disability benefits; deducting insurance benefits to which employes contributed . . . . .	677
disability benefits; hernia while lifting a heavy piece of iron off a lathe . . . . .	668
disability benefits; injuries to and loss of fingers not otherwise classified . . . . .	656
disability benefits; loss of one eye . . . . .	661
disability benefits; loss of several fingers; consecutive payments for each . . . . .	655
disability benefits; loss of use of fingers without amputation . . . . .	656
disability benefits; severe straining of lumbar muscles . . . . .	675
disability benefits; workman earning same wages as before the injury . . . . .	668
domestic servants not included in compensation act . . . . .	1269
election of remedy by workman after injury . . . . .	315
employé; definition of . . . . .	1271
evidence; statement made by deceased workman as to manner of injury . . . . .	847 n
exemption of compensation claims . . . . .	1279
farm laborers not included in Compensation Act . . . . .	1269
fees of arbitrators . . . . .	1283
fees of attorneys subject to approval . . . . .	1283
fees of physician appointed by Industrial Accident Board . . . . .	1283
form; agreement in regard to compensation . . . . .	848
form; application for review of claim before full board . . . . .	855
form; award on arbitration . . . . .	852
form; notice of appointment of member of committee of arbitration . . . . .	852
form; notice of hearing . . . . .	851
form of acceptance of Act . . . . .	247
form of notice to be posted by employers upon acceptance of Act . . . . .	249
form of proof on posting notice to employes . . . . .	250
form; receipt on account of compensation . . . . .	848
form; settlement receipt . . . . .	849
form; stipulation and waiver of arbitration . . . . .	853
funeral benefits . . . . .	561, 1274
incompetents; procedure as to . . . . .	1278
Industrial Accident Board; creation and powers of . . . . .	1280, 1281
insurance benefits in addition to compensation not considered in computing compensation . . . . .	1277

MICHIGAN— <i>Continued</i>	PAGE
insurance contribution not to affect amount of payments of compensation . . . . .	1286
insurance of compensation claims; requirements relating to . . . . .	974, 1285
insurance of compensation claims; when insurer deemed party to compensation proceeding . . . . .	846 n
insuring compensation; company must be licensed to operate in Michigan . . . . .	1286
interstate and intrastate commerce; effect of Act upon . . . . .	1292
judgment; entering on decision of Industrial Accident Board or arbitration committee . . . . .	1283
liability of employer for compensation in spite of the fact that he carries insurance . . . . .	1286
limitations; notice of injury and claim for compensation . . . . .	1278
lump sum payments . . . . .	844 n
manner of bringing employers and employes under Compensation Act . . . . .	245, 1269, 1270
medical and hospital benefits . . . . .	553, 1273
medical examination . . . . .	930, 1278, 1279
medical examination by physician appointed by Industrial Accident Board . . . . .	1283
minor; payment of compensation; to whom made . . . . .	847 n
minors; procedure as to . . . . .	1278
modifying awards and decrees . . . . .	922, 1284
mutual insurance companies; not affected by Act . . . . .	1286
mutual liability insurance companies; Act authorizing formation of . . . . .	1293
mutual liability insurance companies; amendment to articles of association . . . . .	1298
mutual liability insurance companies; approval of articles of association . . . . .	1295
mutual liability insurance companies; articles of association; form and contents . . . . .	1294
mutual liability insurance companies; number of forms necessary to formation of . . . . .	1293
mutual liability insurance company; penalty for false oath . . . . .	1298
mutual liability insurance companies; power to hold real estate . . . . .	1298
mutual liability insurance companies; power to sue and be sued . . . . .	1298
mutual liability insurance companies; powers of in general . . . . .	1295, 1296, 1297
mutual liability insurance companies; withdrawal from such company by policyholder; liability for assessments . . . . .	1297

Volume 2 begins at page 1053

MICHIGAN— <i>Continued</i>	PAGE
notice of injury . . . . .	1278
notices of injuries and of claims for compensation . . . . .	778
notice and claim for compensation; when defects waived; manner of service . . . . .	1278
notice of election to adopt compensation principle; procedure	1270
payment of compensation claims; how made . . . . .	1285
payments; should be made weekly . . . . .	606, n, 649
penalty; failure of employer to report accidents . . . . .	1285
physical examination . . . . .	930, 1278, 1279
physician; fee of when appointed by Industrial Accident Board . . . . .	1283
physicians' fees; approval . . . . .	1283
place of payment of compensation . . . . .	650
presumption as to election to adopt compensation principle	1271
procedure . . . . .	1280
procedure; agreement as to compensation claim; filing and approval thereof . . . . .	1282
procedure; appeal; Supreme Court may review the decisions of Industrial Accident Board on questions of law . . . . .	1283
procedure; arbitration; formation of committee . . . . .	1282
procedure; arbitration proceedings of arbitration commit- tee . . . . .	1282, 1283
procedure; entering judgment on findings of Industrial Acci- dent Board or arbitration committee . . . . .	1283
procedure; findings of fact made by Industrial Accident Board are final . . . . .	1283
procedure; questions not settled by agreement determined by Industrial Accident Board . . . . .	1284
procedure; review by Industrial Accident Board of decision by arbitration committee . . . . .	1283
procedure; review of controversy between Commissioner of Insurance and others relative to State Insurance Fund . . . . .	1290
public corporations; compensation claims part of operating expenses . . . . .	1279
rejection of compensation principle; how effected . . . . .	1272
repealing Compensation Act; effect of on State insurance fund	1291
reports of accidents by employers . . . . .	842, 843, n, 936, 1284
review by Industrial Accident Board of decision of Arbitration Committee . . . . .	1283
rules of procedure by Industrial Accident Board . . . . .	842 n
saving clause as to existing causes of action . . . . .	1292

MICHIGAN— <i>Continued</i>	PAGE
secretary of Industrial Accident Board; appointment and salary of . . . . .	1285
serious and wilful misconduct; carpenter coming from roof by means of a rope instead of using a ladder . . . . .	489
serious and wilful misconduct; explosion of dynamite cap which employé was using without authority . . . . .	491
serious and wilful misconduct; workman injured while cleaning carding machine on which there was a notice reading "Hands Off" . . . . .	490
serious and wilful misconduct; workman oiling machinery by placing hands on gears contrary to shop rules. . . . .	492
serious and wilful misconduct; workman on tow boat injured by reason of disobedience of orders . . . . .	491
serious and wilful misconduct; workman running for time clock when whistle blew . . . . .	491
State institution; compensation payments part of current expenses . . . . .	650
State institution; fund out of which compensation paid . . . . .	847 n
State insurance fund; administration of by Commissioner of Insurance . . . . .	1287, 1288, 1289
State insurance fund; classification of establishments . . . . .	1288
State insurance fund; default by employer in contribution premium or assessment; penalty for . . . . .	1289
State insurance fund; payments to employés made upon certificate of Commissioner of Insurance . . . . .	1291
State insurance fund; review of controversies; arising between Commissioner of Insurance and others . . . . .	1290
State insurance fund; withdrawal of employer who has joined fund . . . . .	1289
taxes; collection of to pay compensation claims by public corporation . . . . .	1280
text of Compensation Act . . . . .	1269
third party liable for injury; rights and procedure . . . . .	1284
to whom Act applies . . . . .	167, 1270
wages which are basis of compensation . . . . .	754, 1276
wages which are basis of compensation; how determined . . . . .	754 n
wages which are basis of compensation; minor actually working a portion of the time the mine was operated . . . . .	755 n
waiting period . . . . .	545, 1272
waiver of common law rights by accepting compensation payments . . . . .	1292
waiver of rights under Compensation Act . . . . .	1279

## Volume 2 begins at page 1053

<b>MICHIGAN—Continued</b>	<b>PAGE</b>
when act becomes effective . . . . .	1293
wilful misconduct; effect of . . . . .	1272
witnesses and proofs . . . . .	847 n
<b>MILITIA; application of Compensation Act to national guards-</b>	
<b>man . . . . .</b>	<b>120</b>
<b>MINNESOTA; abolition of defenses . . . . .</b>	<b>89, 1299</b>
accident; definition of . . . . .	1320
administration and procedure . . . . .	856
agreements as to compensation payments . . . . .	1312
agreements as to compensation; approval of . . . . .	1310, 1311
aliens; rights of under Act . . . . .	1311
amputation; provisions relating to . . . . .	1320
appeals . . . . .	898
arising out of employment; provision of statute . . . . .	522
assignment of compensation claims . . . . .	1313
attorney's fees; approval . . . . .	1300
child; definition of . . . . .	1319
commutation of compensation payments . . . . .	954, 1312
compensation; definition of . . . . .	1319
compromising compensation claims . . . . .	947
constitutional law; effect of declaration that any portion of	
Act is unconstitutional . . . . .	1320
contractors and subcontractors; provisions relating to . . . . .	538, 1316
death benefits . . . . .	609, 1305
death of workman after compensation paid for a while; effect	
of . . . . .	1305
dependents; who are . . . . .	609, 1305
"dependent child"; definition of . . . . .	1319
dependents; distribution of compensation . . . . .	1306
deposit of compensation with trustee; effect of . . . . .	1313
disability benefits . . . . .	699, 1303, 1304
disability from several injuries; amount of compensation . . . . .	1308
distribution of compensation to dependents . . . . .	1306
election of employ� to reject compensation after employer has	
adopted it . . . . .	1300
election of employer not to adopt compensation principle . . . . .	1300
election of remedy by workman after injury . . . . .	316
employ�; definition of . . . . .	1319
employer; definition of . . . . .	1319
Employers' Liability Act; effect of Compensation Act on . . . . .	1300
evidence; burden of proof as to wilful negligence . . . . .	1300

Volume 2 begins at page 1053

MINNESOTA— <i>Continued</i>	PAGE
exemption of compensation claims . . . . .	1313
fees of attorneys; approval . . . . .	1300
form of notice by employer to employé that employer is insured . . . . .	253
form; notice by employer to employés that employer elects not to adopt the compensation principle . . . . .	253
form; notice of workman to employer that workman elects not to accept compensation . . . . .	254
form; settlement death case . . . . .	860
form; settlement disability case . . . . .	857
funeral benefits . . . . .	561, 1307
"injuries or death caused by accident"; definition of . . . . .	1320
insurance of compensation payments . . . . .	976, 1314, 1315
insurance of compensation payments; requirements as to provisions of policy . . . . .	1315, 1316
insurance of compensation; employer may insure part of employés only . . . . .	976 n
interstate and foreign commerce; effect of on Compensation Act . . . . .	1301
joint employers; liability of . . . . .	1308
Labor Commissioner; duty to advise employés of rights under Act . . . . .	1312
limitation; approval of agreements for compensation . . . . .	1311
limitation; modification of agreements and awards . . . . .	1312
limitation; notice of accident; claim for compensation . . . . .	1309
limitation; rejection of compensation principle . . . . .	1302
manner of bringing employer and employé under Act . . . . .	251, 1301
medical, surgical and hospital services . . . . .	553, 1308
medical examination . . . . .	930, 1310
modification of agreements and awards . . . . .	922, 1312
notice of accident . . . . .	1308, 1309
notices of injuries and of claims for compensation . . . . .	779
notices to be posted by adoption of compensation principle . . . . .	1302
payments of compensation; when made . . . . .	1303
"personal injuries, arising out of employment"; definition of . . . . .	1320
"personal injuries due to accident"; definition of . . . . .	1320
physical examination . . . . .	930, 1310
physician; definition of . . . . .	1319
preference of compensation claims . . . . .	1313
presumption of adoption of compensation principle . . . . .	1302
procedure in case of dispute or failure to agree upon compensation . . . . .	1311, 1313

## Volume 2 begins at page 1053

<b>MINNESOTA—Continued</b>	<b>PAGE</b>
procedure; records of settlements . . . . .	1312
rejection of compensation principle; how effected . . . . .	1302
repealing Act . . . . .	1231
reports of injuries by employers . . . . .	936
report by employer of all sums paid for legal, medical and hos- pital services from compensation claims . . . . .	1300
saving clause as to existing causes of action . . . . .	1314
surgeon; definition of . . . . .	1319
text of Compensation Act . . . . .	1299
third person; liable for injury; rights and liabilities of parties	1316
third party liable for injury; procedure . . . . .	1317, 1318
to whom Act applies . . . . .	171
wages which are basis of compensation . . . . .	756
waiting period . . . . .	545, 1308
waiver of common-law rights by adopting compensation . . .	1301
when Act becomes effective . . . . .	1321
wilful negligence; effect of . . . . .	1299
workman; definition of . . . . .	1319
<b>MINOR; provable earnings of as basis of compensation . . . . .</b>	<b>646</b>
securing position by misrepresenting age; application of Com- pensation Act . . . . .	133
<b>MODIFICATION OF AWARDS. See title of each State.</b>	
ability to earn old wages in new occupation . . . . .	919
allowance for expenses when work furnished away from home	916
apportioning loss between employer and employé . . . . .	915
Arizona . . . . .	921
California . . . . .	921
circumstances must have changed to justify modification . .	902
Connecticut . . . . .	921
date of application for modification governs rights of parties .	904
diminishing payments; burden of proof . . . . .	916
disability due to brooding over injury . . . . .	913
disability due to idleness and softened muscles . . . . .	913
disease following injury; disability from disease . . . . .	911
disease; workman permanently injured but suffering increased disability from disease . . . . .	912
eyes affected; rolling mill hand able to work with glasses when vision impaired . . . . .	912
failure of workman to get or attempt to get light work . . . .	911
increased susceptibility to occupational disease . . . . .	919
Illinois . . . . .	921



Volume 2 begins at page 1053

MODIFICATION OF AWARDS— <i>Continued</i>	PAGE
inability to do same work as before injury . . . . .	920
inability to obtain light work . . . . .	909
increasing age as affecting disability . . . . .	907
infant earning as much after as he did before accident . . . . .	914
Iowa . . . . .	921
Kansas . . . . .	921
Kentucky . . . . .	1052 u
lack of evidence as to exact amount workman is able to earn . .	920
light work; ability to perform; reducing payments by reason thereof . . . . .	908
light work; failure of workman to get or attempt to get light work . . . . .	911
light work; inability to obtain . . . . .	909
light work; reducing payments after offer and refusal of light work . . . . .	910
Maryland . . . . .	921
Massachusetts . . . . .	922
Michigan . . . . .	922
Minnesota . . . . .	922
Nebraska . . . . .	922
Nevada . . . . .	922
New Hampshire . . . . .	922
New Jersey . . . . .	923
new medical evidence on review to show changed circumstances . . . . .	904
New York . . . . .	923
offering suitable employment . . . . .	910
Ohio . . . . .	923
Oregon . . . . .	923
permanent partial disability; ability to earn same wages after as before accident . . . . .	918
probable earnings of infant in different grades . . . . .	914
profits of business enterprise as affecting right to reduce compensation . . . . .	915
recovering overpayments of compensation . . . . .	918
recovery from injury as a question of fact . . . . .	906
reducing payments after offer and refusal to do light work . . .	910
refusal to submit to surgical operation . . . . .	907
<i>res adjudicata</i> ; application of doctrine of . . . . .	903
reviewing payments by reason of ability to do light work . . .	908
Rhode Island . . . . .	923
slackness of work so that employé is unable to secure work . .	914

---

 Volume 2 begins at page 1053
 

---

MODIFICATION OF AWARDS— <i>Continued</i>	PAGE
suspensory award; when permitted . . . . .	917
terminating compensation payments . . . . .	905
terms of application for review binding on application . . . . .	904
Texas . . . . .	923
Washington . . . . .	924
West Virginia . . . . .	924
Wisconsin . . . . .	924
MONTANA; Act of 1909; declared unconstitutional . . . . .	9
MOTHER OF ILLEGITIMATE CHILD AS DEPENDENT OF FATHER OF CHILD . . . . .	581

## N

NATIONAL GUARDSMAN; application of Compensation Act to . . . . .	120
NEBRASKA; abolition of defenses . . . . .	91, 1322
accident; definition of . . . . .	1342
administration and procedure . . . . .	863
agreements as to payments of compensation . . . . .	1336
agreements to waive rights under Compensation Act . . . . .	1335
alien dependents; represented by foreign consul . . . . .	1331
amputation; provisions relating to . . . . .	1330
appeals . . . . .	898, 1338
arising out of employment; provision of statute . . . . .	522
assignment of compensation payments . . . . .	1342
attorney's fees; approval . . . . .	1324
autopsy . . . . .	1336
casual employments excepted . . . . .	1327
claim for compensation . . . . .	1335
commutation of claims and awards . . . . .	954, 1338, 1339
compromise of compensation payments . . . . .	947, 1338
constitutional law; effect of declaration that any portion of law is unconstitutional . . . . .	1343
contractors and subcontractors; provisions relating to . . . . .	538, 1327
"casual employments"; definition of . . . . .	1327
court; definition of . . . . .	1343
death benefits . . . . .	612, 1330, 1331
death benefits; to whom payments made . . . . .	1339
"death"; definition of . . . . .	1343
death of employé; receiving disability compensation . . . . .	1331
dependents; who are . . . . .	612, 1330-1333
deposit of future payments . . . . .	1339
disability benefits . . . . .	701, 1328, 1329, 1330

NEBRASKA— <i>Continued</i>	PAGE
election of remedy by workman after injury . . . . .	316
election to reject Act; effect of . . . . .	1323
"employé"; definition of . . . . .	1326
employers' liability act; effect of on compensation statute . . . . .	1323
evidence; wilful negligence; burden of proof . . . . .	1324
exemption of compensation payments . . . . .	1342
fees of attorneys; approval . . . . .	1324
form; affidavit of posting of notice . . . . .	261
form; affidavit of service of notice withdrawing rejection of Act . . . . .	262
form; employer's withdrawal of notice of election rejecting compensation principle . . . . .	261
form; joint election of employers and employés to adopt the compensation principle . . . . .	258
form; notice by employé of rejection of compensation principle . . . . .	259
form; notice by employé of withdrawal of election to reject compensation principle . . . . .	262
form; notice by employer of election not to pay compensation . . . . .	259
form; proof of service of notice by employé . . . . .	260
funeral expenses . . . . .	561
incompetents; provisions as to . . . . .	1335
injury; definition of . . . . .	1342
injury increasing disability; compensation for . . . . .	1334
insurance benefits other than compensation; when not considered . . . . .	1335
insurance of compensation . . . . .	978
insurance of compensation payments; requirements as to payments . . . . .	1340, 1341
insurance policies; existing liability; insurance policies; provisions in relation to . . . . .	1341
intoxication of employé when injured; rule as to . . . . .	1322, 1334
joint employers; liability of . . . . .	1334
limitation; appeals . . . . .	1338
limitation; claim for compensation . . . . .	1335
limitation; effect of declaration that any portion of law is unconstitutional . . . . .	1343, 1344
limitation; failure to agree or take proceedings within one year . . . . .	1337
limitation; modification of compensation awards . . . . .	1338
limitation; notice of injury . . . . .	1335
limitation; return day of summons . . . . .	1338
manner of bringing employer and employé under Act . . . . .	255, 1325
medical attention . . . . .	554, 1328
medical examination . . . . .	931, 1336

## Volume 2 begins at page 1053

NEBRASKA— <i>Continued</i>	PAGE
minors; provisions as to . . . . .	1335
modifying awards . . . . .	922, 1338
notice of injury . . . . .	1335
notices of injuries and of claims for compensation . . . . .	779
outworkers excluded . . . . .	1327
payments of compensation; when made . . . . .	1333
payments; to whom made in death cases . . . . .	1339
"personal injury"; definition of . . . . .	1342
"personal injuries arising out of and in the course of employ- ment"; definition of . . . . .	1343
physician; definition of . . . . .	1342
physical examination . . . . .	931, 1336
pleading; verification of answer . . . . .	1338
preference of compensation claims . . . . .	1342
procedure when parties fail to agree . . . . .	1336, 1337
procedure; appeals from judgment . . . . .	1338
procedure; follows that in civil actions upon failure to agree . . . .	1337
procedure; petition in district court . . . . .	1337
rejection of Act; effect of . . . . .	1323
release of claim from either employer or insurance company . . . .	1342
repealing Act . . . . .	1344
reports of injuries by employers . . . . .	937, 1339
saving clause as to existing causes of action . . . . .	1343
service of notice of injury and claim for compensation . . . . .	1335, 1336
settlements in full; exceptions . . . . .	1338
subrogation; when third person liable for injuries . . . . .	1327
surgeon; definition of . . . . .	1342
text of Compensation Act . . . . .	1322
third person; liability for injuries; provision relating to . . . . .	1327
title of Act; how cited . . . . .	1344
to whom Act applies . . . . .	172, 1323, 1326
wages which are basis of compensation . . . . .	757, 1333
waiting period . . . . .	545, 1328
waiver of common-law rights by electing to adopt compensation principle . . . . .	1324, 1325
waiver of election to reject compensation principle . . . . .	1325
waiver of rights under Compensation Act . . . . .	1335
when Act becomes effective . . . . .	1344
when Act becomes effective; Preface, Volume 1, p. v . . . . .	0000
wilful negligence; burden of proof . . . . .	1324
"wilful negligence"; definition of . . . . .	1343
wilful negligence; effect of . . . . .	1334

---

 Volume 2 begins at page 1053
 

---

NEBRASKA— <i>Continued</i>	PAGE
wilful negligence of employé; effect of . . . . .	1322
workman; definition of . . . . .	1326
NERVOUS TROUBLES; mental shock or fright; injury arising out of employment. . . . .	380
NEURITIS; optic; caused by noxious gases; injury arising out of employment. . . . .	370
NEVADA; abolition of defenses. . . . .	92, 1347
accounting for money paid by reason of employment of work- man held not within the provisions of Act. . . . .	1365
administration and procedure. . . . .	863
appeals. . . . .	898
arising out of employment; provision of statute. . . . .	523
assignment of compensation claims. . . . .	1361
blanks to be furnished by Industrial Commission. . . . .	1354
books and papers of employer; inspection of . . . . .	1362
claim for compensation; how and when filed by workman or dependent. . . . .	1362
classification of industries for payment of premium to State Insurance Fund. . . . .	1354, 1355, 1356, 1357
commutation of claims and awards. . . . .	954, 1361
compromising compensation claims. . . . .	947
constitutional law; effect of declaration that State Insurance provision invalid. . . . .	1365
constitutional law; effect; rights of employers and employés on finding that law is invalid. . . . .	1365, 1366
contempt; failure of witnesses to attend before Commission. . . .	1353
contractors and subcontractors; provisions relating to. . . . .	539, 1351
contracts waiving rights under Compensation Act. . . . .	1361
copy of evidence and proceedings certified by stenographer. . . .	1354
death benefits. . . . .	616, 1358
death benefits; lump sum payment to widow upon remarriage. . .	1361
default of employer in payment of premium to State Insurance fund; penalty. . . . .	1363
dependents; who are. . . . .	616, 1360, 1361
depositions of witnesses without the State. . . . .	1354
disability benefits. . . . .	704, 1358, 1359, 1360
domestic servants; excluded from operation of Compensation Act. . . . .	1365
election of remedies; action by employé against employer in default for premium to State Insurance Fund. . . . .	1363

Volume 2 begins at page 1053

NEVADA—*Continued*

PAGE

election of remedies; when exclusive remedy is not under Compensation Act. . . . .	1349
election of remedy by workman after injury. . . . .	317
employés' notice of rejection of Compensation Act. . . . .	1350
evidence; compelling attendance of witnesses and production of books and papers. . . . .	1353
evidence; depositions of witnesses without the State. . . . .	1354
exemption of compensation claims. . . . .	1361
expenses of administration; how paid. . . . .	1365
farm laborers; excepted from Compensation Act. . . . .	1365
fees of witnesses and officers; serving subpoenas. . . . .	1353
form; employer's notice of rejection of compensation principle. . . . .	265
form; employé's notice of rejection of terms of Act. . . . .	267
funeral expenses. . . . .	561, 1358
Industrial Commission; creation and powers of. . . . .	1351, 1352, 1353
Industrial Commission; power to prosecute and defend actions to enforce Compensation Act. . . . .	1364
inspection of books and papers of employer. . . . .	1362
insuring compensation. . . . .	980
intoxication causing injury. . . . .	1347, 1349
limitations; rejection of Compensation Act; how long to continue; time of giving notice of withdrawal. . . . .	1350
limitations; withdrawal of election to adopt compensation principle. . . . .	1350
lump sum payment to widow upon re-marriage. . . . .	1361
manner of bringing employer and employé under Act. . . . .	263, 1347
medical examination. . . . .	931, 1361
minors; employment of under age prescribed by law; penalty. . . . .	1364
modification of compensation award. . . . .	922, 1362
notice of rejection. . . . .	1348
notice of rejection of Compensation Act by employé. . . . .	1350
notices of injuries and claims for compensation. . . . .	780
oaths; power of Industrial Commission to examine employers and representations under oath. . . . .	1353
penalty; misrepresentations as to amount of payroll. . . . .	1363
penalty; refusal of employer to submit books and papers to Industrial Commission. . . . .	1363
penalty; removal of safeguards by workman. . . . .	1364
physical examination. . . . .	931, 1361
premiums of State Insurance Fund; increase and decrease of. . . . .	1357, 1358
premiums of State Insurance Fund; when and where paid. . . . .	1358

NEVADA—*Continued*

	PAGE
presumption of adoption of compensation principle . . . . .	1346, 1349
presumption that injury was caused by negligence . . . . .	1347
rejection of Act; how effected . . . . .	1347, 1348
rejection of Compensation Act by employé; notice . . . . .	1350
rejection of compensation principle by both employer and employé; effect . . . . .	1351
rejection of compensation principle by employé; effect . . . . .	1349
repealing clause . . . . .	1366
report of accidents by employer . . . . .	937, 1362
rules and directions for employers . . . . .	863 n
rules and directions for workmen . . . . .	866 n
safeguard; failure to provide; penalty . . . . .	1364
safeguards; workman injured by reason of removal; penalty . . . . .	1364
safety devices; failure of employer to provide; effect . . . . .	1349
saving clause . . . . .	1366
State Insurance Fund; creation of and premiums to be collected . . . . .	1354, 1355, 1356, 1357
State Insurance Fund; premiums; increase and decrease of rates . . . . .	1357
State insurance fund; State not liable for payment of benefits . . . . .	1365
State not liable for payment of compensation claims . . . . .	1365
stenographers' minutes; use of as evidence . . . . .	1354
text of Compensation Act . . . . .	1346
third party causing injury; rights and liabilities of parties . . . . .	1351
to whom Act applies . . . . .	176, 1346, 1347, 1365
wages which are basis of compensation . . . . .	757
waiting period . . . . .	546, 1361
waiver of provisions of Compensation Act . . . . .	1365
waiver of rights under Compensation Act . . . . .	1361
when Act becomes effective . . . . .	1366
wilful intention to cause injury . . . . .	1349
wilful intent to cause injury; effect of . . . . .	1347
withdrawal of election to adopt compensation principle . . . . .	1350
witnesses; compelling attendance and production of books and papers . . . . .	1353
witnesses; depositions . . . . .	1354
witnesses; fees . . . . .	1353

## NEW BRUNSWICK; actions to recover compensation; in what

cases allowed . . . . .	1678
agricultural laborers excluded from provisions of Act . . . . .	1679

NEW BRUNSWICK—*Continued*

	PAGE
amendments to Compensation Act.....	1687, 1689, 1693, 1695
assault by fellow workman; effect of on right to compensation.....	1691
bill of particulars of loss; provisions relating to.....	1679
casual employes excluded from Act.....	1689
child; definition of.....	1679
commutation of compensation payments; execution for commuting amounts.....	1694
contract; waiving Compensation Act.....	1685
contractors and subcontractors; amendment relating to rights and liabilities of.....	1687
contractors and subcontractors; rights and liabilities of parties.....	1681
costs; admission of facts; effect of.....	1686
costs; when and how allowed.....	1688
damages; how estimated.....	1678
death benefits; amendment in relation to.....	1692, 1696
declaration; what to contain.....	1685
dependents; who are.....	1690
disability benefits; amendment in relation to.....	1692, 1697
domestic servant excluded from provisions of Act.....	1679
election of remedy after injury; wilful Act of employer; effect of.....	1685, 1686
employer; definition of.....	1679
fellow workman; malicious act or neglect of causing injury; effect of on right to compensation.....	1691
form of notice of injury.....	1686
funeral benefits.....	1692
intoxication of fellow workman; effect of on right to compensation.....	1691
limitation; action for compensation.....	1679
limitation; intervening holiday; effect of.....	1686
limitation; notice of accident; amendment in relation to.....	1693
limitation; notice of injury.....	1683
limitation; notice of injury; amendment in relation to.....	1697
medical attendance.....	1692
medical attendance; amendment in relation to.....	1693
negligence as a basis for compensation; amendment in relation to.....	1690
negligence of employer when necessary basis of compensation.....	1680, 1681, 1682, 1683
notice of injury.....	1683



Volume 2 begins at page 1053

NEW BRUNSWICK— <i>Continued</i>	PAGE
notice of injury; contents of . . . . .	1684
notice of injury; demand for better notice . . . . .	1684, 1685
notice of injury; form . . . . .	1686
notice of injury; service of . . . . .	1684
parent; definition of . . . . .	1679
penalty; when to be deducted from compensation . . . . .	1683
procedure; admission of facts; effect of . . . . .	1686
procedure; summary petition . . . . .	1687, 1688
railway servant; definition of . . . . .	1680
rules; power of clerk or register to formulate . . . . .	1688
service of notice of injury . . . . .	1684
superintendents; definition of . . . . .	1679
text of Compensation Act . . . . .	1678
to whom Act applies . . . . .	1680
to whom Act applies; amendment as to persons excluded from operation of Act . . . . .	1689
to whom Act applies; employments excluded from provisions of Act . . . . .	1679, 1680
to whom Act applies; persons excluded from provisions of Act; amendment of statute . . . . .	1695
waiver of provisions of Compensation Act . . . . .	1685
wilful Act of employer; effect of; election of remedy after in- jury . . . . .	1685, 1686
wilful Act of workman; effect of on right to compensation . . . .	1691
workman; definition of . . . . .	1679
workman; definition of; amendments in relation to . . . . .	1695
 NEW HAMPSHIRE; abolition of defenses . . . . .	 93, 1369
administration and procedure . . . . .	867
agreements as to compensation claims . . . . .	1373
appeals . . . . .	898
appeal from decision of Commissioner of Labor relating to ad- ministration of Act . . . . .	1369
arising out of employment; provision of statute . . . . .	523
assignment of compensation claims . . . . .	1374
attorneys' fees; approval . . . . .	1374
bond; when to be furnished by employer . . . . .	1369
Commissioner of Labor; duties of in relation to Compensation Act . . . . .	1369
commutation of claims and awards . . . . .	955
compromising compensation claims . . . . .	948
contractors and subcontractors; liability to employes of . . . . .	539

## Volume 2 begins at page 1053

NEW HAMPSHIRE—*Continued*

	PAGE
death benefits . . . . .	617, 1371
dependents, who are . . . . .	617, 1371
disability benefits . . . . .	705, 1372
election of remedy by workman after injury . . . . .	319
election of remedy; workman's right to elect when employer fails to comply with safety statute . . . . .	1370
exemption of compensation claims . . . . .	1374
fees of attorneys; approval . . . . .	1374
funeral benefits . . . . .	561, 1371
incompetents; provisions relating to . . . . .	1373
insuring compensation . . . . .	980
intoxication; effect of on claim for compensation . . . . .	1370
limitations; notice of accident . . . . .	1370
manner of bringing employer and employé under compensation principle . . . . .	268, 1369
medical attendance . . . . .	554, 1371
medical examination . . . . .	931, 1372
minors; provisions relating to . . . . .	1373
modifying awards . . . . .	922
notice of accident . . . . .	1370
notices of injuries and of claims for compensation . . . . .	780
physical examination . . . . .	931, 1372
preference of compensation claims . . . . .	1374
procedure; determination of claims for compensation . . . . .	1373
reports of employers of accidents and payments of compensation claims . . . . .	1374
reports of injuries by employers . . . . .	937
revocation of acceptance of compensation principle . . . . .	1369
revocation of acceptance of compensation principle; how affected . . . . .	1369
saving clause; as to accrued causes of action . . . . .	1370
serious and wilful misconduct; effect of on claim for compensation . . . . .	1370
service of notice of accident . . . . .	1371
text of Compensation Act . . . . .	1368
to whom Act applies . . . . .	176, 1368
wages which are basis of compensation . . . . .	757, 1372
waiting period . . . . .	546, 1370
when Act takes effect . . . . .	1374

NEW JERSEY; abolition of defenses . . . . .	94, 1375
administration and procedure . . . . .	867

NEW JERSEY— <i>Continued</i>	PAGE
administration and procedure; by whom proceeding brought under § 12 . . . . .	867 n
administration and procedure; defect in statute . . . . .	794
agreements as to compensation claims not binding unless full compliance with statute . . . . .	1384
agreements waiving benefits of Compensation Act . . . . .	1387
alien dependents; when not entitled to compensation . . . . .	1381
amputation; provisions relating to . . . . .	1387
appeals . . . . .	898
arising out of employment; assault; workman in street injured by a passing truck belonging to third person . . . . .	507
arising out of employment; emergency foreman of laborers inspecting electric light wire after thunder storm . . . . .	501
arising out of employment; meaning of term . . . . .	402
arising out of employment; provision of statute . . . . .	523
arising out of employment; woman about to leave for home because of illness; hair caught in machinery while she was combing it . . . . .	421
arising out of employment; workman injured by bar of metal dropped by workman of independent contractor . . . . .	507
assignment of compensation claims . . . . .	1386
attorneys; fees of; approval . . . . .	1376
commutation of compensation claims . . . . .	955, 1384, 1385
commutation of claims and awards; facts held not to justify making order for commutation . . . . .	955 n
commutation of claims and awards; how amount computed . . . . .	955 n
compromising compensation claims . . . . .	948
compromising and composition of claims in behalf of infants . . . . .	1391
compromising compensation claims; full amount provided by statute must be paid . . . . .	1384
compromising compensation claims; release of third party; when does not release employer . . . . .	948 n
compromising compensation claims; release; when set aside for fraud or misunderstanding . . . . .	948
compromising payment of less than statutory amount as basis of release . . . . .	650
constitutional law; effect of declaration of portion of Act to be invalid . . . . .	1388
construction of term "arising out of and in course of employment" . . . . .	349
contractors and subcontractors; provisions relating to . . . . .	540, 1375, 1376

Volume 2 begins at page 1053

NEW JERSEY—*Continued*

	PAGE
death benefits . . . . .	618, 1379, 1380
death benefits; actual dependents; meaning of term . . . . .	619 n
death benefits; amount where workman leaves a widow and dependent father and mother but no childrep . . . . .	619 n
death benefits; dependent; father and mother where workman does not leave any widow . . . . .	619 n
death benefits; dependents; adopted child . . . . .	619 n
death benefits; dependents; mother . . . . .	618 n
death benefits; dependents; mother, amount of compensation . . . . .	619 n
death benefits; dependents; mother; where son leaves a widow . . . . .	619 n
death benefits; dependents; step children . . . . .	620 n
death benefits; dependents; workman leaving no widow but leaving father and mother; not entitled to compensation prior to amendment to Act . . . . .	618 n
death benefits; distribution of compensation . . . . .	1380
dependents; who are . . . . .	618, 1379, 1380
dependents; minors; how long compensation paid . . . . .	1380
deposit of future payments of compensation . . . . .	1385, 1386
determination and findings of fact . . . . .	872
disability benefits . . . . .	706, 1377, 1378, 1379
disability benefits; consecutive and not concurrent payments for temporary disability and specific indemnity . . . . .	654
disability benefits; consecutive payments for specific injuries . . . . .	1381
disability benefits; increased period of disability by failure to follow physician's instructions . . . . .	647
disability benefits; injuries to and loss of fingers; not otherwise classified . . . . .	658
disability benefits; loss of several fingers . . . . .	655
disability benefits; permanent partial disability; minimum amount payable in all cases of specific indemnity . . . . .	653
disability benefits; permanent partial disability; specific indemnities; two weeks' waiting period should not be deducted . . . . .	653
distribution of compensation benefits in death cases . . . . .	1380
election of remedy by workman after injury . . . . .	320
election of remedy by workman after injury; effect of amendment of 1913 when injury caused by third person . . . . .	321
election of remedy by workman after injury; rules adopted by court . . . . .	302
election to adopt compensation principle . . . . .	1377
election to adopt compensation principle; presumption . . . . .	1390
employer; definition of . . . . .	1386

NEW JERSEY— <i>Continued</i>	PAGE
Employers' Liability Commission; appointment and powers of	1389
evidence; burden of proof.....	867
evidence; burden of proof; wilful negligence.....	1375
exemption of compensation claims.....	1386
fees of attorneys; approval.....	1376
findings should contain statement of facts and not merely refer to petition.....	872 n
first to hit upon plan of elective or optional compensation law	10
form; notice by employer or employé of rejection of compen- sation principle.....	272
form; notice of hearing.....	871
form; order for hearing.....	870
form; petition to Judge of Court of Common Pleas.....	868
funeral benefits.....	561, 1380
incompetents; provisions relating to.....	1391
injury caused by third person; right of workman to claim both compensation and damages.....	620 n
insuring compensation.....	980
intoxication; defense to compensation claim.....	1376
intoxication; when constituting wilful negligence.....	1386
limitation; claim for compensation.....	1388
limitation; notice of injury.....	1381, 1382
limitation; rejection of compensation principle after once adopted.....	1377
manner of bringing employer and employé under Act....	269, 1377
medical attention.....	554, 1381
medical examination.....	931, 1382
minors; provisions relating to.....	1391
modifying compensation agreements and awards.....	923, 1385
municipal employés; special Act relating to.....	1392
notice of injury.....	1381, 1382
notices of injuries and of claims for compensation.....	781
notice of injury and of claims for compensation; effect of knowl- edge of foreman when notice is not served.....	781 n
payment of compensation claims in death cases; to whom made	1383
physical examination.....	931, 1382
preference of compensation claims.....	1386
presumption of election to adopt compensation principle..	1377, 1390
procedure; answer to petition.....	1383
procedure; hearing on petition.....	1384
procedure in case of failure to agree as to compensation claim	1382
procedure; petition; contents and service thereof.....	1383

---

 Volume 2 begins at page 1053
 

---

<b>NEW JERSEY—Continued</b>	<b>PAGE</b>
public employes; special Act relating to.....	1392
rejection of compensation principle after once adopted.....	1377
repealing Act.....	1389
reports of injuries by employers.....	937
saving clause.....	1388
serious and wilful misconduct; misrepresenting knowledge as to operating saws.....	490
State and municipalities; employes of; special Act relating to..	1392
subrogation; when injury caused by third person.....	1387
texts of Compensation Act.....	1375
third person causing injury; provisions relating to.....	1387
to whom Act applies.....	177
to whom Act applies; public employes; special Act relating to..	1392
wages which are basis of compensation claims.....	758, 1388
wages which are basis of compensation; absence of agreement as to rate of wages.....	731
wages which are basis of compensation; longshoreman working irregular hours; extra wages for night work.....	758 n
wages which are basis of compensation; irregular earnings for different weeks.....	758 n
wages which are the basis of compensation; minimum amount payable when no contract for amount is made.....	758 n
waiting period.....	546, 1381
waiver of provisions of Compensation Act.....	1387
when Act became effective.....	1389
wilful negligence; burden of proof.....	1376
wilful negligence; definition of.....	1386
wilful negligence; effect of.....	1375
<b>NEW TRIAL; arbitrator cannot grant.....</b>	<b>805</b>
<b>NEW YORK; abolition of defenses.....</b>	<b>96, 1399, 1400</b>
accident prevention associations.....	1423
administration and procedure.....	873
administration and procedure; discussion relating to administra- tive feature of N. Y. Act.....	792
adopted child; when a dependent.....	1398
agreements waiving provisions of Act.....	1410
aliens; benefits payable to.....	1404, 1405
alternative remedy of employe when employer fails to insure compensation claim.....	1399
appeals.....	898
appeals from decisions of Compensation Commission.....	1407

NEW YORK— <i>Continued</i>	PAGE
arising out of employment; provision of statute.....	524
assignment of compensation claims.....	1410
attorney's fees; approval.....	1407
blanks to be furnished by Workmen's Compensation Commission	1420
child; definition of.....	1398
claim for compensation; when made.....	1409
Commissioner of Labor must aid Workmen's Compensation Commission.....	1429
commutation of claims and awards.....	955, 1409
Compensation Act of 1910.....	9
compensation; definition of.....	1397
compromising compensation claims.....	948
constitutional law; effect of declaration of invalidity of act....	1429
contempt; witnesses; failure to obey subpoenas.....	1418
contractors and subcontractors; liability to employés of.....	540
contribution to compensation payments by employés.....	1410
costs; when allowed.....	1407
death benefits.....	621, 1403, 1404
death; definition of.....	1398
default of employer in paying compensation; effect and remedy	1408
dependent child includes posthumous child and adopted child..	1398
dependents; who are.....	621, 1404
depositions of witnesses without the State.....	1419
disability benefits.....	709, 1401, 1402, 1403
domestic servants excluded from operation of Act.....	1397
election of remedy; alternative remedy of employé when em- ployer fails to insure compensation claim.....	1399
election of remedy by workman after injury.....	321
elective Compensation Act of 1910.....	10
employé; definition of.....	1397
employer; definition of.....	1397
employment; definition of.....	1397
evidence; depositions of witnesses without the State.....	1419
evidence; technical rules of evidence and procedure not required by commission.....	1418
evidence; transcription of stenographer's minutes.....	1419
exemption of compensation claims.....	1410
falsification of payrolls; when employer contributor to State in- surance fund.....	1426
farm laborers excluded from operation of Act.....	1397
fees of attorneys; approval.....	1407
fees of physicians; approval.....	1400

NEW YORK— <i>Continued</i>	PAGE
fees of witnesses.....	1418, 1419
funeral benefits.....	562, 1403
incompetents; limitation.....	1429
information to be furnished by employers to compensation commission.....	1428
injury; definition of.....	1398
inspection of records of employers.....	1428
inspections; employments under insurance fund.....	1426
insurance benefits; other than those under Act not considered in determining compensation.....	1410
insurance carrier; definition of.....	1398
insurance of compensation.....	980
insurance of compensation claim; alternative remedy of em- ployé when employer fails to insure claims.....	1399
insurance of compensation claims; cancellation of policies....	1413
insurance of compensation claims; failure to procure; penalty..	1412
insurance of compensation claims; failure to provide; effect....	1411
insurance of compensation claims; how effected.....	1411
insurance of compensation claims; mutual insurance companies; creation and powers of under special Act.....	1430
insurance of compensation claims; provisions of policies..	1412, 1413
interstate commerce; effect of Act on those engaged in.....	1428
intoxication; injury causes by.....	1399
hazardous employments; definition of.....	1397
limitation; claim for compensation.....	1409
limitation; notice of injury.....	1405
limitations; incompetents and minors.....	1429
limitation; withdrawal from State insurance fund; continuation of liability.....	1426
manner of bringing employer and employé under Act.....	272
medical attention.....	555, 1400
medical examination.....	931, 1405
minors; limitation.....	1429
modification of awards; continuing jurisdiction of compensation commission.....	923, 1407, 1419
mutual employers' liability and workmen's compensation cor- porations; special Act in relation to.....	1430
notice of election to adopt compensation principle.....	1411, 1412
notice of injury.....	1405
notices of injuries and of claims for compensation.....	782
payment of compensation; default of employer; effect of.....	1498
payment of compensation; how and where made.....	1408



NEW YORK— <i>Continued</i>	PAGE
penalties; application of.....	1427
penalties for false representation.....	1428
penalty; failure to insure compensation claims.....	1412
penalty; failure to provide insurance for compensation claims..	1411
penalty; wilful misrepresentation in relation to State insurance fund.....	1426
penalty; witnesses; failure to obey subpoena.....	1418
personal injury; definition of.....	1398
physical examination.....	931, 1405
physicians; fees of; approval.....	1400
posthumous child; when a dependent.....	1398
preference of compensation claims.....	1410
presumption; in relation to claim; notice and cause of injury..	1406
privileged communications; disclosures of information secured by commission.....	1427
procedure; continuing jurisdiction of compensation commis- sion.....	1419
procedure; depositions of witnesses without the State.....	1419
procedure; presentation of compensation claim to compensation commission and determination thereof.....	1406
procedure; stenographer's minutes transcribed as evidence....	1419
procedure; technical rules of evidence or procedure not required by compensation provision.....	1418
release of liability by joining State fund.....	1412
repealing clause.....	1429
report of compensation commission to legislature.....	1419
reports of injuries by employers.....	937, 1427
safety accident prevention associations.....	1423
saving clause.....	1429
security for compensation payments; how effected.....	1411
service of notice of injury.....	1405
State Fund; definition of.....	1398
State insurance fund; action for collection of premium.....	1425
State insurance fund; classification of risks and adjustment of premiums.....	1422, 1423
State insurance fund; classifying employment and fixing and adjusting premium rates.....	1423
State insurance fund; creation of.....	1420
State insurance fund; declaring dividend to be credited on future premium payments.....	1424
State insurance fund; disclosures of information received from employers prohibited.....	1427

---

 Volume 2 begins at page 1053
 

---

NEW YORK—*Continued*

	PAGE
State insurance fund; expenses of administration; how paid..	1422
State insurance fund; falsification of payrolls; penalty.....	1426
State insurance fund; inspections.....	1426
State insurance fund; payment of premiums; when required	1424, 1425
State insurance fund; pay rolls.....	1426
State insurance fund; surplus and reserve.....	1421
State insurance fund; treasurer; custodian of.....	1421
State insurance fund; wilful misrepresentations; penalty.....	1426
State insurance fund; withdrawal from fund.....	1426
stenographer's minutes; transcribed to be admissible as evidence.....	1419
subrogation; third person causing injury; rights and remedies of parties.....	1409
surplus and reserve; investment of.....	1421
text of Compensation Act.....	1393
third person causing injury; provisions relating to.....	1409
to whom act applies.....	178, 1393, 1394, 1395, 1396, 1397
wages which are the basis of compensation.....	759, 1398, 1401
waiting period.....	546, 1400
waiver of provisions of Act.....	1410
when Act takes effect.....	1429
wilful intention to cause injury; effect of.....	1399
witnesses; contempt; failure to obey subpoena.....	1418
witnesses; fees of.....	1418, 1419
witnesses; subpoena issued by compensation commissioner....	1418
Workmen's Compensation Commission; creation and powers of.....	1414, 1415, 1416, 1417
Workmen's Compensation Commission; rules; powers to adopt	1417

## NOTICES OF INJURIES AND OF CLAIMS FOR COMPENSATION

	766
admission in answer that compensation has been paid amounts to admission that claim made.....	804
Arizona.....	769
California.....	770
Connecticut.....	772
decisions under British Statute.....	767
Illinois.....	773
Illinois; form.....	830
Illinois; form of notice.....	829
Iowa.....	774
Kansas.....	774

NOTICE OF INJURIES, ETC.— <i>Continued</i>	PAGE
Maryland.....	775
Massachusetts.....	775
Michigan.....	778
Minnesota.....	779
Nebraska.....	779
Nevada.....	780
New Hampshire.....	780
New Jersey.....	781
New York.....	782
Ohio.....	783
Oregon.....	784
Rhode Island.....	784
Texas.....	785
Washington.....	787
West Virginia.....	787
Wisconsin.....	788
 NOVA SCOTIA; agreement waiving compensation claim.....	 1703
agreements as to compensation claim.....	1701
agricultural employ�es exempted from provisions of Act.....	1706
alternative scheme.....	1703, 1704
arbitration; provisions relating to.....	1701, 1710, 1711
Arcadia Coal Co.; exemption of from provisions of Act.....	1704
assignment of compensation claims.....	1710
average weekly earnings; definition of.....	1707, 1708
bankruptcy of employer; right of workman against insurer.....	1705, 1706
claim for compensation.....	1702
commutation of compensation awards.....	1710
compromising on compensation claim.....	1703
contracting out.....	1703, 1704
contractors and subcontractors; rights and liabilities of parties..	1705
death benefits.....	1706
dependents; distribution of compensation payments to.....	1709
dependents; who are.....	1699
disability benefits.....	1707
Dominion Coal Co.; exemption of from provisions of Act.....	1704
Dominion Iron Steel Co.; exemption of Act.....	1704
drunkenness; effect of on right to compensation.....	1701
election of remedies after accident; demand for assessment of compensation after failure of action.....	 1701
election of remedies after accident; wilful act of employer.....	1700
employer; definition of.....	1699

## Volume 2 begins at page 1053

NOVA SCOTIA— <i>Continued</i>	PAGE
employments exempted from provisions of Act . . . . .	1706
engineering work; definition of . . . . .	1699
exemption of compensation claims . . . . .	1710
factory; definition of . . . . .	1698
fees of court . . . . .	1712
fees of solicitor . . . . .	1712
fishing; employés not under Act . . . . .	1706
funeral benefits . . . . .	1707
insurance of compensation claim; bankruptcy of employer; effect . . . . .	1705, 1706
Intercolonial Coal Min. Co.; exemption of Act . . . . .	1704
intoxication; effect of on right to compensation . . . . .	1701
investment of compensation claims for dependents . . . . .	1709
limitation; claim for compensation . . . . .	1702
limitation; notice of injury . . . . .	1702
lumbering employés not under Act . . . . .	1706
lump sum payments . . . . .	1710
medical attendance . . . . .	1707
medical examination . . . . .	1708, 1709
medical referee; when case submitted to . . . . .	1712
"member of family"; definition of . . . . .	1700
military; those in service of not under Act . . . . .	1700
mine; definition of . . . . .	1699
modification of compensation awards . . . . .	1710
Navy; those in service of not under Act . . . . .	1700
notice of injury . . . . .	1702
Nova Scotia Steel and Coal Co.; exemption of Act . . . . .	1704
outworker; definition of . . . . .	1700
payment of compensation claims; to whom made . . . . .	1708
penalties; when applied on compensation payments . . . . .	1701, 1702
physical examination . . . . .	1708, 1709
procedure; arbitration provisions relating to . . . . .	1710, 1711
railway; definition of . . . . .	1698
report of Governor . . . . .	1704
reviewing compensation awards . . . . .	1710
saw mill; employés not under Act . . . . .	1706
serious and wilful misconduct; effect of on right to compensation . . . . .	1701
service of notice of injury and claim for compensation . . . . .	1702
ship building; employés not under Act . . . . .	1706
solicitor; fees of . . . . .	1712
Sydney and Louisburg Ry. Co.; exemption of Act . . . . .	1704

NOVA SCOTIA— <i>Continued</i>	PAGE
text of Compensation Act.....	1698
third party causing injury; rights and liabilities of party.....	1706
to whom Act applies.....	1698
undertakers.....	1705
undertaker; definition of.....	1699
wages which are the basis of compensation.....	1707, 1708
waiting period.....	1700
waiver of compensation claim.....	1703
waiver of provisions of Act.....	1700
when act became effective.....	1706
workman; definition of.....	1699
NOXIOUS GASES; injuries arising from.....	370

## O

OCCUPATIONAL DISEASES; contracted partly in employment	
of two employers; apportioning compensation.....	649
term "accidental injury" does not include.....	340
—See <i>British Act</i> .	
OFFSET; overpayment of compensation.....	805
recovering overpayments of compensation.....	918
OHIO; abolition of defenses.....	97, 1453
actions in Supreme Court to review acts of Industrial Commission.....	1481, 1482, 1483
actions; when prosecuted by county attorney.....	1463
administration and procedure.....	874
agreements; waiving rights under Compensation Act.....	1461
amendments; when effective.....	1436
appeals.....	899
appeal from decision of Industrial Commission; when allowed..	1460
appeals to courts from orders of Industrial Commission..	1479, 1480
assignment of compensation claims.....	1460
attorney general; when appointed as special prosecutor by Industrial Commission.....	1481
attorney's fees; approval.....	1455, 1461
arising out of employment; corporation employé loaned to officer of corporation.....	456
arising out of employment; driver caring for horse at his own home after keeping him there over Sunday.....	452
arising out of employment; driver of delivery wagon bitten by dog while unfastening door in high fence.....	513
arising out of employment; provision of statute.....	524

OHIO—*Continued*

PAGE

arising out of employment; workman after quitting day's work departs from premises by unusual route.....	476
arising out of employment; workman playing practical jokes...	511
blanks to be furnished by the Industrial Commission.....	1442, 1472
Board of Boiler Rules; abolition of departments.....	1469
bond of State Treasurer.....	1446
books and papers; examination of.....	1462
Bureau of Arbitration and Conciliation; abolition of depart- ment.....	1469
by whom Act administered.....	1441
carrying own insurance; when employers permitted to do so; rules in regard thereto.....	1449, 1450
certification of official acts.....	1480
Chief Engineer of Mines; abolition of department.....	1469
Chief Inspector of Shops and Factories; abolition of department	1469
classification and rates; publication of.....	1465
classification of occupations and degree of hazards of different risks.....	1442
Commissioner of Labor Statistics; abolition of department.....	1469
commutation of compensation awards.....	956, 1460
compromising compensation claims.....	949
constitutional law; effect of declaration when any portion of Act is invalid.....	1465
contempt; refusal of witnesses to testify.....	1441
contractors and subcontractors; liability to employes of.....	540
costs.....	1461
death benefits.....	623, 1458, 1459
death benefits; dependents; children mentally and physically deficient.....	623 n
death benefits; dependents; filing claim by executor or adminis- trator of deceased.....	623 n
death benefits; dependents; widow and minor children.....	623 n
default in payment of compensation; remedy.....	1453
default of employer in payment of premium to insurance fund; remedy.....	1454
dependents; who are.....	623, 1458, 1459
dependents; wife and child who have been deserted by husband	580
depositions of witnesses residing without the State.....	1442
depositions of witnesses without the State.....	1480
deputy; definition of.....	1470
disability benefits.....	712, 1456, 1457, 1458
disability benefits; pain and suffering not compensated.....	645

OHIO—Continued	PAGE
disability benefits; workman receiving same wages after as before injury . . . . .	673
disbursement of State Insurance Fund and how and by whom made . . . . .	1452
dividends payable to employers . . . . .	1443
election of remedies; employés limited to compensation payments when employers subject to Act . . . . .	1451
election of remedy by workman after injury . . . . .	322
employé; definition of . . . . .	1446, 1470
employer; definition of . . . . .	1470
employers who are permitted to carry their own risks without contributing to State insurance fund . . . . .	1449, 1450
employers who must pay into the State insurance fund . . . . .	1451
"employment"; definition of . . . . .	1470
evidence; burden of proof . . . . .	874 n
evidence; common-law or statutory rules of evidence not enforced . . . . .	1461
evidence; depositions of witnesses residing without the State . . . . .	1442
evidence; stenographer's minutes; transcribed copy thereof . . . . .	1442
exemption of compensation claims . . . . .	1460
expenses of Industrial Commission; how paid . . . . .	1464, 1466
fees of witnesses . . . . .	1480
fees of attorney; approval . . . . .	1455, 1461
fees of witnesses and officers serving subpoenas . . . . .	1441
frequentier; definition of . . . . .	1470
funeral benefits . . . . .	562, 1452, 1460
general order; definition of . . . . .	1471
Industrial Commission; abolition of certain departments in State government . . . . .	1469
Industrial Commission; appointment of deputies . . . . .	1481
Industrial Commission; appointment of special prosecutor . . . . .	1481
Industrial Commission; creation and powers of . . . . .	1437
Industrial Commission; duties of Commissioner of Labor Statistics imposed upon . . . . .	1476
Industrial Commission; engineers; power of license . . . . .	1476
Industrial Commission; expenses of . . . . .	1468
Industrial Commission; general orders of; when to take effect . . . . .	1477
Industrial Commission; occupation of those appointed . . . . .	1467
Industrial Commission; office of . . . . .	1468
Industrial Commission; orders of shall be deemed prima facie reasonable and lawful . . . . .	1477
Industrial Commission; organization of . . . . .	1468

OHIO—*Continued*

PAGE

Industrial Commission; power and jurisdiction to determine claims.....	1460
Industrial Commission; power of in relation to unsafe place to work.....	1476
Industrial Commission; powers of in relation to arbitration and mediation.....	1475
Industrial Commission; powers of in relation to establishing health and safety rules.....	1473, 1474, 1475
Industrial Commission; powers of to establish free employment agency.....	1475
Industrial Commission; publication of rules and orders....	1480
Industrial Commission; quorum.....	1487
Industrial Commission; review of order made by Commission	1478
Industrial Commission; salary of.....	1468
Industrial Commission; seal.....	1469
Industrial Commission; sessions of.....	1469
Industrial Commission; statistical information; collection of by.....	1475, 1476
information to be furnished by employers.....	1439
injunction restraining operation of classification or other rules of Industrial Commission.....	1465
inspection of place of employment by representative of Industrial Commission.....	1473
insuring compensation.....	983
insurance contracts must include compensation payments....	1463
interstate and intrastate employes; provisions relating to	1462, 1463
investment of State Insurance Fund.....	1445
limitation; appeals.....	1460, 1461
limitation; general orders; when to take effect.....	1477
local order; definition of.....	1471
manner of bringing employer and employé under Act.....	275
medical attention.....	555, 1452, 1460
medical examination.....	932, 1461
minors; by whom claim made.....	1459
minors; when <i>sui juris</i> .....	1461
modification of compensation awards.....	923, 1459
municipal corporations; power reserved to.....	1478, 1479
notice of compliance with Compensation Act by employers; when and how given.....	1451, 1452
notices of injuries and of claims for compensation.....	783
oaths; administration of.....	1480
operative; definition of.....	1446



OHIO— <i>Continued</i>	PAGE
order; definition of . . . . .	1471
payment of premiums into State insurance fund by private employers; when and how made . . . . .	1449
payment of premiums into State insurance fund by public corporations; when and how made . . . . .	1447, 1448
penalties; deducting insurance premiums from workmen's wages . . . . .	1461
penalty; disclosing information furnished by employers to Industrial Commission . . . . .	1440
penalty; failure of employers to furnish information to Industrial Commission . . . . .	1440
penalty; failure of employer to comply with Compensation Act . . . . .	1453
penalty; misrepresentation as to amount of payroll . . . . .	1462
penalty; refusal to allow inspection of books and papers . . . . .	1462
penalty; violation generally of Compensation Act . . . . .	1483, 1484
physical examination . . . . .	932, 1461
"place of employment"; definition of . . . . .	1470
practice; executor or administrator; filing claim by . . . . .	623 n
preference of compensation claims . . . . .	1456
preference of actions relating to Industrial Commission over other civil actions . . . . .	1483
premium rate; classification of . . . . .	1442, 1443
premium rates; readjustment thereof . . . . .	1443
premiums; adjustment of; when made . . . . .	1444
premiums; deductions from workmen's wages; penalty for . . . . .	1461
premium; State Insurance fund; default of employer; remedy . . . . .	1454
privileged communication; information furnished by employers to Industrial Commission . . . . .	1440
procedure; actions in Supreme Court to review action of commission . . . . .	1481, 1482, 1483
procedure; common law or statutory rules of evidence not enforced . . . . .	1461
procedure; Industrial Commission; power to determine claims . . . . .	1460
publication of classification and rates . . . . .	1465
publication of rules and orders of Industrial Commission . . . . .	1480
rates and classifications; publication of . . . . .	1465
record of proceedings before Industrial Commission . . . . .	1480
referendum petition as to Act of 1913; when act becomes effective . . . . .	21
referendum petition; effect of . . . . .	1436
refusal of witnesses to testify; contempt . . . . .	1441

OHIO—*Continued*

	PAGE
rehearing or review of order made by Industrial Commission . .	1478
report of Industrial Commission to Governor . . . . .	1464
reports by employers of injuries and compensation payments	938, 1463
review by courts of any act of Industrial Commission	1481, 1482, 1483
review of orders of commission by courts . . . . .	1479
rules and orders of Commission; publication of . . . . .	1480
rules of Industrial Commission . . . . .	875 n
rules relating to procedure before Industrial Commission . .	1454
rules relating to procedure; where claim made against employer in default . . . . .	1453, 1454
rules to be adopted by the Industrial Commission . . . . .	1439
"safe" and "safety devices"; definitions of . . . . .	1471
safe place to work; requirement that employer shall furnish	1471, 1472
safety device; removal or damage of by employé . . . . .	1472
self-inflicted injuries; compensation not awarded for . . . . .	1452
State insurance fund; rules in relation to collection of . . . .	1444
State Liability Boards of Awards; creation and powers of . . .	1437
State Liability Board of Awards (now called the Industrial Commission, although name not changed in body of original Act).	
stenographer's minutes; transcribed copy thereof as evidence	1442
subscriber; compliance with Act required . . . . .	1481
supplemental Act creating Industrial Commission superseding State Liability Board of Awards and abolishing other departments . . . . .	1467
surplus fund; how created . . . . .	1443
taxation to collect money contributed to State Insurance fund by public corporations . . . . .	1447
text of Compensation Act . . . . .	1436
to whom Act applies . . . . .	184, 1446
treasurer; custodian of State insurance fund . . . . .	1444
wages which are basis of compensation . . . . .	760, 1459
wages which are basis of compensation; how determined . . .	760 n
wages which are basis of compensation; injury received on the day the workman began to work . . . . .	760 n
wages which are basis of compensation; pensions from United States Government not considered . . . . .	735, n; 761, n
waiting period . . . . .	547, 1456
waiver; definition of . . . . .	1471

OHIO—Continued	PAGE
waiver of common law rights by acceptance of or making claim for compensation.....	1455
waiving rights under Compensation Act.....	1461
when Act becomes effective.....	21, 1436
when Act becomes effective; Preface, Volume 1, p. v.....	0000
when Act takes effect.....	1484
wilful Act; definition of.....	1455
wilful injury by employer; remedy by employ� even though employer has adopted compensation principle.....	1455
witnesses; deposition of witnesses residing without the State.....	1442
witnesses; depositions of witnesses without the State.....	1480
witnesses; fees of.....	1441
witnesses; power of Industrial Commission over.....	1480
witness fees.....	1480
workman; definition of.....	1446
OPTIC NEURITIS; caused by noxious gases.....	370
OREGON; abolition of defenses.....	98
administration and procedure.....	878
amputations; provisions relating to.....	1500, 1501
appeals.....	899
appeal; reviewing decisions of commission.....	1506, 1507
arising out of employment; provision of statute.....	524
assignment of compensation claims.....	1505
beneficiaries; definition of.....	1491
books and records of employer; inspection of.....	1506
"child"; definition of within meaning of Act.....	1491
classification of industries.....	1494, 1495
commutation of claims and awards.....	956
commutation of compensation payments; non-resident beneficiary.....	1502, 1503
compromising compensation claims.....	949
contractors and subcontractors; liability to employ�s of.....	540
death benefits.....	625, 1497, 1498
default of employer in payment of premium into State Fund; effect.....	1504
deliberate intention to cause injury; effect of.....	1503
dependents; who are.....	625, 1491, 1497
disability benefits.....	714, 1498, 1499, 1500, 1501, 1502
disbursements from Insurance Fund; how made.....	1508
election by employers and employ�s; how effected.....	1488, 1489
election of remedy by workman after injury.....	324

Volume 2 begins at page 1053

OREGON—*Continued*

PAGE

election of remedy after accident; default of employer for payment into State Insurance Fund . . . . .	1504
election of remedy by employé; when injury caused by third person . . . . .	1489
employer; definition of . . . . .	1491
engineering work; definition of . . . . .	1490
exemption of compensation claims . . . . .	1505
factory; definition of . . . . .	1490
form; notice by employé of his election not to become subject to the Act . . . . .	285
form; notice by employé recalling his election not to become subject to the provisions of the Act . . . . .	286
form; notice by employer of rejection of compensation provision of statute . . . . .	283
form; notice by employer recalling election not to contribute to Industrial Accident Fund . . . . .	284
form; notice by employer to be posted about works that he has or has not contributed to the Accident Fund . . . . .	284
funeral expenses . . . . .	562, 1497
husband and wife; wife who has been deserted by workman prior to his death . . . . .	1502
Industrial Accident Fund; creation of . . . . .	1496
insuring compensation . . . . .	984
invalidity; definition of . . . . .	1491
limitation; filing claim for compensation . . . . .	1505
limitation; rejection of Compensation Act . . . . .	1491, 1492
limitation; withdrawal of rejection of Act . . . . .	1493
lump sum payments; when made . . . . .	1501
manner of bringing employers and employés within the provisions of the Act . . . . .	279, 1488, 1489, 1506
medical attention . . . . .	556, 1503
medical examination . . . . .	932, 1506
mill; definition of . . . . .	1490
mine; definition of . . . . .	1490
minor; when deemed <i>sui juris</i> . . . . .	1503
modification of award . . . . .	923, 1502, 1505
non-resident beneficiary; commutation of payment . . . . .	1502
notices of injuries and of claims for compensation . . . . .	784
physical examination . . . . .	932, 1506
premium; portion thereof to be deducted from wages of workman . . . . .	1494
procedure; making claims for compensation before commission . . . . .	1505

OREGON— <i>Continued</i>	PAGE
quarry; definition of . . . . .	1490
rejection of Compensation Act; how made . . . . .	1491, 1492
report of accidents by employer . . . . .	938, 1506
reserve fund; establishment of . . . . .	1501, 1502
reviewing decisions of commission . . . . .	1506, 1507
safety devices; failure of employer to provide; election of remedies by employé . . . . .	1504, 1505
saving clause . . . . .	1508
State Industrial Accident Commission; bond of . . . . .	1486
State Industrial Accident Commission; creation and powers of 1485, 1486, 1487, 1488	
State Industrial Accident Commission; employment of assist- ants, clerks, experts, etc. . . . .	1487
State Industrial Accident Commission; may sue and be sued . . .	1487
State Industrial Accident Commission; oath of . . . . .	1486
State Industrial Accident Commission; removal of commis- sioners; proceedings on . . . . .	1486
State Industrial Accident Commission; report to Governor . . . .	1488
State Industrial Accident Commission; rules of . . . . .	1488
State Industrial Accident Commission; seal . . . . .	1487
State Insurance fund. See <i>Industrial Accident Fund</i> .	
text of Act . . . . .	1485
third person causing injury; election of remedy by employé . . . .	1489
to whom Act applies . . . . .	185, 1488, 1489, 1490, 1491
wages which are basis of compensation . . . . .	761
waiting period . . . . .	547
when Act becomes effective; Preface, Volume 1, p. vi . . . . .	000
when Act takes effect . . . . .	1508
withdrawal of rejection of Act . . . . .	1493
workman; when includes officers of corporation . . . . .	1491
workshop; definition of . . . . .	1490
ORIGIN AND NATURE OF SO-CALLED COMMON-LAW DEFENSES . . . . .	3
OUTWORKERS; application of Compensation Acts . . . . .	142
—See title of each State.	
OVEREXERTION; when an accidental injury . . . . .	349
<b>P</b>	
PAIN AND SUFFERING; NOT COMPENSATED . . . . .	645
PARALYSIS; inhalation of coal gas; injury arising out of employ- ment . . . . .	371

<b>PARALYSIS—Continued</b>	PAGE
result of riding heavy tricycle; injury arising out of employ- ment.....	352
<b>PARENTS; when they are dependents.....</b>	575
<b>PARENTS OF ILLEGITIMATE CHILDREN; when dependents.....</b>	581
<b>PARTIAL DEPENDENTS; partial and total dependence of same     workman.....</b>	575
<b>PARTNERS; application of Compensation Act to.....</b>	121
<b>PAYMENTS; death benefits; place of.....</b>	606 n
<b>PAYMENT OF DISABILITY BENEFITS; required to be made     weekly.....</b>	649
<b>PENSION; not considered in determining the wages which are basis     of compensation.....</b>	761 n
<b>PERMANENT PARTIAL DISABILITY.....</b>	653
—See <i>Disability Benefits</i> .	
<b>PERMANENT TOTAL DISABILITY.....</b>	651
—See <i>Disability Benefits</i> .	
<b>PERSONAL INJURY; construction of term in relation to Michigan     Act.....</b>	340
<b>PHYSICAL EXAMINATION.....</b>	925
Arizona.....	928
California.....	928
cause of death submitted to medical referee.....	926
Connecticut.....	929
demand that workman's attorney be present at examination...	925
Illinois.....	929
Iowa.....	929
Kansas.....	929
Kentucky.....	1052 w
Maryland.....	929
Massachusetts.....	930
medical referee's report not conclusive on arbitrator.....	928
Michigan.....	930
Minnesota.....	930
Nebraska.....	931
Nevada.....	931
New Hampshire.....	931
New Jersey.....	931
New York.....	931
Ohio.....	932
Oregon.....	932

PHYSICAL EXAMINATION— <i>Continued</i>	PAGE
refusal of workman to undergo surgical examination.....	927
Rhode Island.....	932
Texas.....	932
unreasonable demand that workman's medical attendant be present at examination.....	926
Washington.....	932
West Virginia.....	933
Wisconsin.....	933
PHYSICIANS; certificates as evidence.....	801
PIECE WORKER; arising out of employment; workman going from one part of farm to another.....	427
PLACE OF PAYMENT; death benefits.....	606 n
PLACE OF PAYMENT OF COMPENSATION.....	650
PNEUMONIA; caused by inhalation of noxious gases.....	370
following exposure or traumatism; injury arising out of employ- ment.....	371
not an injury within the meaning of the federal Act.....	342
POISON; germ entering system through break in skin; injury arising out of employment.....	352
POLICEMAN; injured while acting as fireman; application of Compensation Act.....	120
POSTHUMOUS CHILD; when a dependent.....	580
POSTHUMOUS ILLEGITIMATE CHILDREN; when depend- ents.....	581
PREFERENCE OF COMPENSATION CLAIMS.—See title of each State.	
PRESUMPTION OF DEATH FROM ABSENCE.....	566
PROCEDURE.....	790
general remarks concerning.....	28
—See <i>Administration and Procedure</i> .	

## Q

QUEBEC; agreements as to compensation.....	1715
agreements as to compensation; judge to act as conciliator.....	1718
agreements waiving provisions of statute.....	1717
apprentices; how wages of determined.....	1715
assignment of compensation claims.....	1716
compensation payments not to be deducted from wages.....	1716
death benefits.....	1714

Volume 2 begins at page 1053

**QUEBEC—Continued**

PAGE

dependent; orphan whose mother died prior to death of work-	
man; compensation under Act.....	586
dependents; apportionment of compensation money.....	1714
dependents; who are.....	1714
disability benefits.....	1713, 1714
election of remedy after accident; right of.....	1716, 1717
exemption of compensation claims.....	1716
French version of Compensation Act.....	1718, et seq
funeral benefits.....	1714
inexcusable fault of workman.....	1714
insurance of compensation claims; regulations relating to.....	1715, 1716
intentionally self-inflicted accident.....	1714
lien of compensation claim on property of employer.....	1717
limitation; action for compensation.....	1718
medical attendance.....	1714
non-residents; when entitled to compensation.....	1714
payments of compensation; how and when made.....	1715
prescribed time within which Acts for compensation must be	
brought.....	1718
procedure in case of disputed claim.....	1717, 1718
security of compensation claim; lien on property of employer...	1717
text of Compensation Act.....	1713
to whom Act applies.....	1713
wages which are the basis of compensation.....	1715
waiting period.....	1714
waiving provisions of statute.....	1717
when Act became effective.....	1718

**R**

RATTLESNAKE; bite of; injury arising out of employment.....	514
RECEIPTS; signing by workman.....	805
RECOVERY OF COMPENSATION; need not be by legal pro-	
ceedings to constitute election.....	942
REFUSAL OF WORKMAN TO PERMIT OPERATION TO BE	
PERFORMED; injury arising out of employment.....	396
REPORTS OF INJURIES BY EMPLOYERS.....	934
Arizona.....	934
California.....	934, 1110
Connecticut.....	934
Illinois.....	935
Iowa.....	935



## Volume 2 begins at page 1053

REPORTS OF INJURIES BY EMPLOYERS— <i>Continued</i>	PAGE
Kansas.....	935
Kentucky.....	1052 x
Maryland.....	935
Massachusetts.....	935
Michigan.....	936
Minnesota.....	936
Nebraska.....	937
Nevada.....	937
New Hampshire.....	937
New Jersey.....	937
New York.....	937
Ohio.....	938
Oregon.....	938
Rhode Island.....	938
Texas.....	938
Washington.....	938
West Virginia.....	938
Wisconsin.....	939
RES ADJUDICATA; modifying awards; application of doctrine res adjudicata.....	903
RESERVES; insufficiency of under State insurance plan.....	64
RHODE ISLAND; abatement; death of petitioner.....	1524
abolition of defenses.....	99, 1509
administration and procedure.....	878
agreement as to compensation; filing and docketing.....	1519
agreements waiving right under Compensation Act.....	1518
agricultural workers not under the provisions of the Act....	1509
alternative schemes permitted; provisions relating to.....	1525
appeal from decisions in compensation cases.....	1521
appeals.....	899
appeal; suspension of operation of decree.....	1522
appeal; when and how heard.....	1523
arising out of employment; provision of statute.....	525
assignment of compensation claims.....	1518
attorneys; fees of; approval.....	1511
commutation of compensation claims.....	956, 1518, 1519
compromising compensation claims.....	950
constitutional law; effect of holding statute invalid.....	1526
contractors and subcontractors; liability to employes of....	540
death benefits.....	627, 1512
deductions for savings or other insurance; not allowed.....	1516

Volume 2 begins at page 1053

RHODE ISLAND— <i>Continued</i>	PAGE
dependents.....	627
dependents; apportionment of compensation between.....	1520
dependents; who are.....	1512, 1513
disability benefits.....	1513, 1514, 1515
domestic servants; exempt from provisions of Act.....	1509
election of remedies; right under Compensation Act exclusive	1511
election of remedy by workman after injury.....	326
election to adopt the compensation principle; how made....	1509
employé; definition of.....	1526
employer; definition of.....	1526
Employers' Liability Act; effect of Compensation Act on....	1527
exemption of compensation claims.....	1518
fees of attorney; approval.....	1511
form; notice by employer of acceptance of provisions of Com- pensation Act.....	288
form; notice by employer of withdrawal of acceptance of pro- visions of Compensation Act.....	288
form; notice by workman of election not to accept provisions of Compensation Act.....	289
forms and rules relating to compensation made by Superior Court.....	1524
funeral expenses.....	562, 1513
incompetents; provisions relating to.....	1516
insuring compensation.....	984
limitation; appeal from decisions in compensation cases.....	1521
limitation; claim for compensation.....	1524
limitation; notice of injury and claim for compensation... ..	1517
manner of bringing employer and employé under provisions of the Act.....	286, 1509
medical attention.....	556, 1511
medical examination.....	932, 1517
minors; payment of compensation to mother; not necessary to file claim for compensation by administrator.....	784 n
minors; provisions relating to.....	1511, 1516
minor; when <i>sui juris</i> .....	1510
modifying awards.....	923, 1523
non-resident beneficiaries; payments to; how made.....	1524
notice of injury and claim for compensation.....	784, 1517
payment of compensation; to whom made in death cases.....	1516
penalties provided in other statutes not affected by Compen- sation Act.....	1526
penalty; deductions for savings or other insurance.....	1516

<b>RHODE ISLAND—Continued</b>	<b>PAGE</b>
physical examination.....	932, 1517
preference of compensation claims. . . . .	1518
procedure; where parties fail to agree on amount of compensation.....	1519
repealing Act.....	1527
reports of injuries by employers.....	938
service of notice of injury and claim for compensation.....	1517
stay on appeal.....	1523
text of Compensation Act.....	1509
third person causing injury; rights and liabilities of parties... .	1525
to whom Act applies.....	189
venue; proceedings to determine compensation claims.....	1524
wages which are the basis of compensation.....	761, 1515
waiting period.....	547, 1511
waiver of rights under common law after adopting compensation principle.....	1510
waiver of right under Compensation Act.....	1518
when Act takes effect.....	1527
wilful intention to cause injury; effect.....	1511
withdrawal from election to adopt compensation principle..	1510
<b>RUPTURE; injury arising out of employment.....</b>	<b>366</b>
when an accidental injury.....	349

## S

<b>SALESMEN; injured while away from employer's premises; arising out of employment.....</b>	<b>452</b>
<b>SAVING LIFE OF ANOTHER; injury arising out of employment.....</b>	<b>505</b>
<b>SASKATCHEWAN; agricultural workers not included under Act</b>	<b>1731</b>
appeals from judgments in compensation cases.....	1732
assignment of compensation claim.....	1732
bankruptcy of employer; rights of workman.....	1729
contractors and subcontractors; rights and liabilities of parties	1729
contract waiving provisions of Act.....	1727
court; definition of in administration of Act.....	1726
death benefits; dependents; how divided among dependents..	1732
dependents; definition of.....	1727
election of remedies; claiming damages or compensation	1730, 1731
election of remedy after accident; action for damages; failure of right to demand compensation.....	1728, 1729
employer; definition of.....	1726

Volume 2 begins at page 1053

<b>SASKATCHEWAN—Continued</b>	PAGE
engineering work; definition of . . . . .	1726, 1731
executor or administrator of deceased workman; proceedings by . . . . .	1728
exemption of compensation claim . . . . .	1732
factory; definition of . . . . .	1725, 1731
farm laborers not included under Act . . . . .	1731
insolvency of employer; rights of workman . . . . .	1729
insurance of compensation claims; rights of workman when employer becomes bankrupt . . . . .	1729, 1730
limitation; when action must be begun . . . . .	1730
limitation on benefits under Act . . . . .	1732
member of family; definition of . . . . .	1727
mine; definition of . . . . .	1726, 1731
negligence; effect of on right to compensation . . . . .	1728
penalty; failure of employer to report accidents . . . . .	1733
preference of compensation claim . . . . .	1730
principal; definition of . . . . .	1726
quarry; definition of . . . . .	1726, 1731
railway; definition of . . . . .	1725
report of accidents by employers . . . . .	1733
text to Compensation Act . . . . .	1725
third person liable for injury; rights and liabilities of parties . .	1731
to whom Act applies . . . . .	1725
waiting period . . . . .	1727
waiving provisions of Act . . . . .	1727
when Act became effective . . . . .	1732
workman; definition of . . . . .	1727
<b>SEAMAN; injured by explosion of gun; injury arising out of em- ployment . . . . .</b>	<b>515</b>
<b>SEAMEN AND MECHANICS GETTING ON AND OFF VES- SELS; accident arising out of employment . . . . .</b>	<b>412</b>
<b>SECURING POSITION BY FALSE REPRESENTATION; application of Compensation Act . . . . .</b>	<b>133</b>
<b>SERIOUS AND WILFUL MISCONDUCT; burden of proof . . . .</b>	<b>800</b>
defense of . . . . .	6
injury arising out of employment . . . . .	480
obligation to family of workman; injury arising out of em- ployment . . . . .	334
—See title of each State.	
<b>SHAREWORKERS ON VESSELS; application of Compensation Act . . . . .</b>	<b>121</b>

	PAGE
SKIN AFFECTIONS FROM ACIDS AND OTHER IRRITANTS; injury arising out of employment.....	356
SLACKNESS OF TRADE; intermittent employment; wages which are basis of compensation.....	742
SNAKE; bite of; injury arising out of employment.....	514
SPRAINS; injury arising out of employment.....	366
STATE INSTITUTION; compensation payments; part of current expenses.....	650
payment of death benefits included as part of current expenses; Michigan.....	606 n
STATE INSURANCE LAWS; actuarial principles underlying..	63
STATUTES; classification of Compensation Acts.....	207
STEP CHILDREN; when dependents under the New Jersey Act.	620 n
STING OF INSECT; injury arising out of employment.....	514
STRAINS; injury arising out of employment.....	366
STRIKES; intermittent employment caused by; wages which are basis of compensation.....	739
STUDENT OF MANUAL TRAINING SCHOOL EMPLOYED ON HOLIDAY; application of Compensation Act.....	118
SUBCONTRACTORS; application of Compensation Act.....	127
—See <i>Contractors</i> .	
SUBSTITUTE; employing of by other workman; application of Compensation Act.....	115
SUICIDE; due to mental condition caused by accident; injury arising out of employment.....	385
SUNDAYS; holidays and shutdowns occurring in period for which compensation is due; disability benefits.....	647
SUNSTROKE; injury arising out of employment.....	375
SUPERVISION OF INSURANCE COMPANIES; necessity of..	64 n
“SUPPORT”; definition of as regards a dependent.....	639 n
SURGICAL OPERATION; refusal to submit to modifying award refusal of workman to permit operation to be performed; injury arising out of employment.....	907 396
SUSPENSORY AWARD.....	804
keeping proceeding alive by payment of nominal sum.....	917

## T

TAXI-CAB DRIVERS; when cabs operated on shares; application of Compensation Act.....	125
TEAMSTERS; relation of master and servant to employers as affecting right to compensation.....	113
TEMPORARY PARTIAL DISABILITY.....	670
—See <i>Disability Benefits</i> .	
TEMPORARY SERVICE OF WORKMAN; employment of other than regular employment as affecting right to compensation..	110
TEMPORARY TOTAL DISABILITY.....	667
—See <i>Disability Benefits</i> .....	667
TETANUS; injury arising out of employment.....	354
TEXAS; abolition of defenses.....	100, 1528
actions; when parties may appeal to courts and refuse to abide by decision of Industrial Accident Board.....	1533, 1534
administration and procedure.....	879
agreements waiving rights under Compensation Act.....	1532
appeals.....	899
arising out of employment; provision of statute.....	525
average weekly wages; definition of.....	1539
commutation of claims and awards.....	956
commutation of compensation payments.....	1532
compromising compensation claims.....	950
constitutional law; invalidity of any portion of Act; effect of..	1540
contractors and subcontractors; liability to employes of..	541, 1534
creditors; when allowed to recover compensation.....	1530
death benefits.....	630, 1530
dependents.....	630
dependents; distribution of compensation.....	1530
disability benefits.....	720, 1531
domestic servants; not covered by Act.....	1529
election of remedy by workman after injury.....	326
employé; definition of.....	1539
“employer”; definition of.....	1539
Employers’ Insurance Association; creation and powers of	1535, 1536, 1537
exemplary damages; when allowed.....	1529, 1530
farm laborers not covered by Act.....	1529
form; agreement in relation to compensation.....	881

TEXAS—Continued	PAGE
form; notice by employer to employés of adoption of compensation principle.....	292
form; notice that an employer has ceased to be a subscriber..	293
funeral expenses.....	562
incompetents; provisions relating to.....	1531, 1532
Industrial Accident Board; creation and powers of.....	1532
Industrial Accident Board; rules of.....	1533
insurance of compensation claims.....	984
insurance of compensation claims; companies authorized to do business.....	1539, 1540
insurance of compensation claims; refund of unearned premium	1540
insurance premiums; approval by Commissioner of Banking and Insurance.....	1534, 1535
limitation; notice of injury.....	1533
lump-sum payments.....	1532
manner of bringing employer and employé under Act.....	290
medical attention.....	556, 1530
medical examination.....	932, 1533
minors; provisions relating to.....	1531, 1532
modifying awards.....	923
notice of injury.....	1533
notices of injuries and of claims for compensation.....	785
notice that employer is a subscriber.....	1535
penalty; failure of employer to report injuries.....	1534, 1535
physical examination.....	932, 1533
procedure before Industrial Accident Board.....	1533
railroad employés; when not covered by Act.....	1529
repealing clause.....	1540
reports of injuries by employers.....	938, 1534
rules of Industrial Accident Board.....	879 n
subscriber; definition of.....	1539
text of Compensation Act.....	1528
to whom Act applies.....	190, 1529
wages which are the basis of compensation claims.....	763, 1539
waiting period.....	547, 1530
waiver of rights under Compensation Act.....	1532
when Act becomes effective.....	1540
TEXTS OF COMPENSATION ACTS OF AMERICAN STATES	1053
THIRD PERSONS; injuries by; arising out of employment.....	338
TIME CLOCK; workman injured while ringing out; injury arising out of employment.....	422

---

 Volume 2 begins at page 1053
 

---

	PAGE
TIPS; wages which are basis of compensation; tips as part of earnings	738
TOES; loss of; disability benefits.....	658
TO WHOM ACTS APPLY.....	105
actors.....	120
apprentices serving without pay.....	117
Arizona.....	146
boarding mistress of construction crew.....	118
California.....	150
casual employés.....	136
conductor on railroad employing assistant; emergency.....	117
charitable organizations; persons employed by out of charity..	119
Connecticut.....	151
contracts exempting employers from the operation of the Act..	144
distinction between the word "employé" and the word "work- man".....	107
domestic servants... ..	134
employer who takes upon himself the function of a workman	110
farm laborers.....	142
Illinois.....	153
independent contractors and subcontractors.....	127
Iowa.....	156
joint employers of same workman.....	112
Kansas.....	160
Kentucky.....	1052 d; 1052 e
limitation of earnings as affecting.....	107
Maryland... ..	164
members of employer's family.....	109
Massachusetts.....	165
Michigan.....	167
Minnesota.....	171
minors; securing position by misrepresenting age.....	133
National Guardsman.....	120
Nebraska.....	172
Nevada.....	176
New Hampshire.....	176
New Jersey.....	177
New York.....	178
Ohio.....	184
Oregon.....	185
outworkers.....	142
partners.....	121



TO WHOM ACTS APPLY— <i>Continued</i>	PAGE
policeman injured while acting as fireman.....	120
Rhode Island.....	189
securing position by false representation.....	133
shareworkers on vessels.....	121
student of manual training school employed on holiday.....	118
taxi-cab drivers; cabs operated on shares.....	125
teamsters.....	113
Texas.....	190
"usual course of the trade, business or profession of the employer".....	143
Washington.....	192
West Virginia.....	197
who is an employé or a workman within the meaning of the Compensation Acts.....	106
Wisconsin.....	203
workman employing assistant or substitute.....	115
workman injured before Act takes effect but dies after statute effective.....	133
workman temporarily in the service of other than regular employer.....	110
TOXIC AMBLYOPIA; injury arising out of employment within the meaning of the Federal Act.....	344
TRAUMATISM; diseases due to but without direct external infection or contagion.....	359
pneumonia following injury; arising out of employment.....	371
TREATIES; effect of on right of aliens as dependents.....	582
TUBERCULOSIS; arising from traumatism; when an accidental injury.....	346
injury arising out of employment.....	359

## U

UNAUTHORIZED ORDERS; workman acting on; injuries arising out of employment.....	500
UNEMPLOYMENT INSURANCE. See <i>British National Insurance Act</i> .	
UNITED STATES; Compensation Acts relating to Government employés; list of.....	9
efforts to pass Compensation Acts in various states.....	9
—See <i>Federal Act</i> .	

	PAGE
"USUAL COURSE OF THE TRADE, BUSINESS OR PROFESSION OF THE EMPLOYER "; meaning of as applied to Compensation Acts . . . . .	143

## V

VACCINATION BY ORDER OF SUPERIOR; injury arising out of employment . . . . .	397
VERTIGO; injuries arising out of employment . . . . .	360
VESSELS; seamen and mechanics getting on and off; injury arising out of employment . . . . .	412
shareworkers on; application of Compensation Act . . . . .	121
VOCATIONAL DISEASES. See <i>Occupational Diseases</i> .	
VOLUNTEERS; acting without scope of authority; injury arising out of employment . . . . .	456

## W

WAGES WHICH ARE BASIS OF COMPENSATION . . . . .	729
absence of agreement as to rate of wages . . . . .	731
actual earnings not usual wages paid in that employment . . . . .	730
adding compensation from all sources including the rent, etc. . . . .	735
allowance by father who is a dependent for maintenance of son . . . . .	743
Arizona . . . . .	746
California . . . . .	746
change in rate of wages during the year . . . . .	742
compensation for previous injury not included in determining basis of compensation for subsequent injury causing death . . . . .	744
Connecticut . . . . .	748
deducting poor law relief received by dependent . . . . .	744
deducting wages paid to an assistant . . . . .	745
eight hours' Act coming into effect causing wages to be reduced; effect of . . . . .	743
employment for less than a week . . . . .	742
intermittent employment due to strikes and other causes . . . . .	739
Iowa . . . . .	750
Kansas . . . . .	751
Kentucky . . . . .	1052 t
longshoreman employed by several employers . . . . .	733
Maryland . . . . .	752
Massachusetts . . . . .	753

## Volume 2 begins at page 1053

WAGES, ETC.— <i>Continued</i>	PAGE
Michigan.....	754
Minnesota.....	756
Nebraska.....	757
Nevada.....	757
New Hampshire.....	757
New Jersey.....	758
New York.....	759
Ohio.....	760
Oregon.....	761
pensions from United States Government are not considered.....	735 n
Rhode Island.....	761
Texas.....	763
tips as part of earnings.....	738
wages paid to seaman under Shipping Act taken into account in awarding compensation.....	745
Washington.....	763
West Virginia.....	763
Wisconsin.....	734
workman employment in different grades.....	731
—See title of each State.	
WAITING PERIOD; Arizona.....	543
California.....	543
computing waiting period; consecutive or non-consecutive days.....	646
Connecticut.....	544
Illinois.....	544
Iowa.....	544
Kansas.....	544
Kentucky.....	1052 p
Maryland.....	544
Massachusetts.....	545
Michigan.....	545
Minnesota.....	545
Nebraska.....	545
Nevada.....	546
New Hampshire.....	546
New Jersey.....	546
New York.....	546
Ohio.....	547
Oregon.....	547
Rhode Island.....	547

## Volume 2 begins at page 1053

WAITING PERIOD—*Continued*

PAGE

specific indemnities; two weeks' waiting period should not be deducted.....	653
Texas.....	547
Washington.....	547
West Virginia.....	548
Wisconsin.....	548
—See title of each State.	

WASHINGTON; abolition of defenses.....	101
accident fund; creation of.....	1550
administration and procedure.....	881
appeals.....	900
appeal; review of proceedings by court.....	1565
appropriation for expenses.....	1569
arising out of employment; provision of statute.....	526
arising out of employment; workman injured at mealtime.....	450
assignment of compensation awards.....	1546, 1561
assignment of claim to compensation fund; when injury takes place away from works.....	1546
attorney's fees.....	1565
beneficiary; definition of.....	1547
books and records; examination of.....	1562
child; definition of.....	1547
classification of industries.....	1551-1553
commutation of compensation claims.....	956, 1559
compromising compensation claims.....	950
contractors and subcontractors; rights and liabilities of parties.....	541, 1563
contribution to State insurance fund.....	1547-1550
costs; on appeal.....	1565
death benefits.....	631, 1554
death benefit; dependent; parent; amount payable when workman is under 21 years of age at time of death.....	632 n
defaulting employers; penalties.....	1559, 1560
dependent; definition of.....	631, 1546, 1554
disability benefits.....	721, 1555, 1556
disability benefits; divorced man paying alimony is unmarried for compensation purposes.....	651
disbursement of State insurance fund.....	1568
election of remedy by workman after injury.....	327
elective adoption of Act; by those not engaged in extra-hazardous employments.....	1564

WASHINGTON— <i>Continued</i>	PAGE
employer; definition of . . . . .	1545
employer; when entitled to compensation payments . . . . .	1546
engineering work; definition of . . . . .	1545
exemption of compensation awards . . . . .	1561
extra-hazardous works; enumeration of . . . . .	1544
factory; definition of . . . . .	1545
fees of attorneys . . . . .	1565
fees of physicians . . . . .	1565
form; agreement by employers and employes in non-hazardous employments to adopt the compensation principle . . . . .	294
funeral expenses . . . . .	562
industrial insurance department; creation and powers of . . . . .	1566, 1567
injury; definition of . . . . .	1547
inspection of employers' books and records . . . . .	1562
insuring compensation . . . . .	985
intentional injuries; provisions relating to . . . . .	1558
interstate commerce; how far Act applies to . . . . .	1564
invalid; definition of . . . . .	1547
limitation; effect of declaration that any portion of Act is invalid . . . . .	1569
limitation; filing claim for compensation . . . . .	1562
manner of bringing employer and employé under Act . . . . .	293
medical attention . . . . .	557
medical examination . . . . .	932, 1562
mill; definition of . . . . .	1545
mine; definition of . . . . .	1545
minors; when <i>sui juris</i> . . . . .	1559
modification of compensation awards . . . . .	924, 1562
non-resident beneficiaries; provisions relating to . . . . .	1558
notices of injuries and of claims for compensation . . . . .	787
penalty for misrepresentation as to pay roll . . . . .	1563
physical examination . . . . .	932, 1562
physician's fees . . . . .	1565
premiums payable to State insurance fund . . . . .	1547-1550
procedure; filing claim for compensation; proceedings thereon . . . . .	1561
public works; application of act thereto . . . . .	1563
quarry; definition of . . . . .	1545
reports of injuries by employers . . . . .	938, 1562
reserves; how fixed . . . . .	1557
review by court; when permitted . . . . .	1558, 1565
safety regulations . . . . .	1570
safety regulations; additional compensation payments . . . . .	1560

<b>WASHINGTON—Continued</b>	<b>PAGE</b>
saving clause.....	1570
text of Compensation Act.....	1543
third person causing injury; rights and liabilities of parties..	1560
to whom Act applies.....	192, 1544
wages which are basis of compensation.....	763
waiting period.....	547
waiver of provisions of Act.....	1561
when act becomes effective.....	1571
workman; definition of.....	1545
workshop; definition of.....	1545
<b>WEST VIRGINIA; abolition of common-law defenses.....</b>	<b>102, 1584</b>
actions by commission.....	1589
administration and procedure.....	881
agreement to waive provisions of Compensation Act.....	1582
agricultural employes not covered by Act.....	1575
appeals.....	900
arising out of employment; provision of statute.....	526
assignment of compensation claims.....	1588
blanks to be furnished by commission.....	1577
bond of State Treasurer for State insurance fund.....	1581
casual employes not subject to Act.....	1575
claim for compensation; when and how made.....	1587
classification of industries.....	1577-1580
commutation of compensation awards.....	957 1588
compromising compensation claims.....	950
constitutional law; effect of declaration that any portion of law is unconstitutional.....	1592
contractors and sub-contractors; liability to employes of..	541
death benefits.....	634, 1585
default in payment of premiums; penalty.....	1584
dependents; who are.....	634, 1585, 1586
dependents; widow or widower living apart from spouse.....	1587
depositions of witnesses residing without the State.....	1577
disability benefits.....	723, 1585
disbursements by commission.....	1589, 1590
disbursement of workmen's compensation fund.....	1583
domestic servants not covered by act.....	1575
election of remedies; when remedy exclusive under Com- pensation Act.....	1582
election of remedy by workman after injury.....	329
evidence; common law and statutory rules of not binding..	1589

Volume 2 begins at page 1053

WEST VIRGINIA— <i>Continued</i>	PAGE
evidence; transcript of stenographer's minutes.....	1577
exemption of compensation claims.....	1588
form; notice by employer to workmen of election to pay compensation.....	296
funeral expenses.....	563, 1585
insurance of compensation claims.....	985
interstate and intrastate employes; provisions relating to..	1591
intoxication; effect of on compensation claim.....	1584
investment of surplus.....	1590
limitation; claim for compensation.....	1587
manner of bringing employer and employé under Act.....	295
medical attention.....	557, 1584
medical examination.....	884 n; 933
modification of award.....	886 n; 924, 1587
notice of accident and of claim for compensation.....	882, 883 n
notice of election to adopt compensation principle; how given	1582
notices of injuries and of claims for compensation.....	787
payments; when and how made.....	1587
penalties; failure of employer to make reports to commission	1590
penalties; fraudulent compensation claims.....	1590
physical examination.....	933
premium rates; how fixed.....	1581
premiums; how computed; contribution to by employers and employes.....	1582
procedure before Public Service Commission; provisions re- lating to.....	1588
Public Service Commission; creation and powers of..	1572
Public Service Commission; rules of procedure.....	1575
reinsurance by Commission of liability.....	1591
repealing clause.....	1592
report of commission to Governor.....	1589
reports of injuries by employers.....	938
rules of procedure before Public Service Commission.....	882 n
self-inflicted injury; effect of.....	1584
State Workmen's Compensation fund; how established.....	1581
text of Act.....	1572
to whom Act applies.....	197, 1575
wages which are basis of compensation.....	763, 1587
waiting period.....	548, 1585
waiver of provisions of Compensation Act.....	1582
when Act becomes effective.....	1582
wilful misconduct; effect of.....	1584

## Volume 2 begins at page 1053

WEST VIRGINIA— <i>Continued</i>	PAGE
witnesses; depositions to take testimony of witnesses out of the State.....	1577
WIDOW'S PENSION; determination of; validity of claim.....	2291
WILFUL ACT; defense of.....	6
WILFUL INJURY BY EMPLOYER. See title of each State.	
WILFUL MISCONDUCT; disobedience of orders which were not enforced.....	591 n
engineer going to dangerous place by direction of chief engineer; Wisconsin Act.....	636 n
injury arising out of employment.....	480
WISCONSIN; abolition of defenses.....	103, 1593
administration and procedure.....	887
administration of Act; Industrial Commission.....	1606
agreements waiving provisions of Compensation Act.....	1593
appeals.....	900
appeal; review of award made by Industrial Commission....	1609
arising out of employment; boy employed to assist in killing hogs injured while attempting to do work outside the scope of employment.....	470
arising out of employment; disobedience of specific orders; street car conductor taking place of motorman contrary to orders.....	495
arising out of employment; fireman in industrial plant going to a place where he was not required to be.....	636 n
arising out of employment; provision of statute.....	526
assignment of compensation claims.....	1611
attorneys' fees; approval.....	1611
average weekly earnings; definition of.....	1602
blank forms to be furnished by Industrial Commission.....	1614
books and papers; production of.....	1607
claim for compensation; delay of four months when employer not misled.....	788 n
commutation of compensation claims.....	957, 1602
commutation of claims and awards; widow desiring to return to Italy.....	957 n
compromising compensation claims.....	950
constitutional law; effect of declaration of any portion of Act; invalidity.....	1615
contempt; witnesses.....	1608
contractors and subcontractors; liability to employes of....	541



WISCONSIN— <i>Continued</i>	PAGE
contractors and subcontractors; rights and liabilities of parties	1595
death benefits	636, 1599
benefit; dependent father; definition of term "support"	639 n
death benefit; dependent; father; when partial dependent	639 n
death benefit; dependent; widow a non-resident alien	638 n
dependents; who are	636, 1599, 1603, 1604
dependents; wife remaining in Europe after husband comes to this country; when husband and wife are living together	579
depositing present value of compensation claims	1614
disability benefits	724, 1597, 1598, 1599
disability benefits; deducting sums which employé earned in other employments	673
disability benefits; falling downstairs; injury causing appendicitis	670
disability benefits; gravel pit employé injured by slide of gravel	669
disability benefits; heart trouble developing after injury	668
disability benefits; injuries to and loss of fingers not otherwise classified	656
disability benefits; injury on punch press	676
disability benefits; loss of index finger	675
disability benefits; loss of one eye	662
disability benefits; loss of toes	658
disability benefits; metal polisher injuring hand on emery wheel	676
disability benefits; stepping on bar of hot iron	669
disability benefits; temporary disability	671
disability benefits; tendon of left arm cut above the wrist	669
election of remedies; exclusive remedy under Compensation Act	1594
election of remedy by workman after injury	330
election to adopt compensation principle	1594, 1595
employé; definition of	1595, 1596
exclusive remedy under Compensation Act	1594
exemption of compensation claims	1611
fees of attorney; approval	1611
fees of courts	1610
form; answer to application	891
form; application for adjustment of claim	890
form; employer's election not to become subject to Compensation Act	298

## Volume 2 begins at page 1053

WISCONSIN— <i>Continued</i>	PAGE
form; employer's notice of withdrawal from operation under Compensation Act.....	299
form; notice of employé upon entering employment of rejection of Compensation Act.....	299
funeral expenses.....	563
Industrial Commission; creation and powers of.....	1606
insurance of compensation claims.....	986, 1611, 1612
insurance of compensation claims; concurrent insurance rights and liabilities of parties.....	1612
insurance of compensation claims; examination of books and records of insurance company.....	1613
insurance of compensation claims; filing classification of risks and rates with Industrial Commission.....	1614
insurance of compensation claims; provisions of insurance contracts.....	1613
insurance of compensation claims; reports by insurance companies of payments made.....	1613
intentional, self-inflicted injuries; provisions relating to....	1594
intoxication; effect of on compensation claim.....	1602
judgment; when rendered on compensation award....	1608, 1609
limitation; claim for compensation; delay of four months when employer not misled.....	788 n
limitation; notice of injury and claim for compensation.....	1605
manner of bringing employer and employé under Act....	297, 1593, 1594
medical attention.....	558, 1597
medical examination.....	933, 1605
medical examination; failure of workman to submit to examination.....	933 n
modification of compensation awards.....	924, 1608
notice of injury and claim for compensation.....	1605
notices of injuries and of claims for compensation.....	788
penalties; violation by insurance companies of provisions relating to premiums, rates and classifications.....	1614
penalty; witnesses; contempt.....	1608
physical examination.....	933, 1605
preference of compensation claims.....	1611
procedure and administration of Industrial Commission.....	1606, 1607
railroad employés; when covered by Act.....	1597
reports of injuries by employers.....	939
review of award made by Industrial Commission.....	1609
rules of Industrial Commission.....	887 n

WISCONSIN— <i>Continued</i>	PAGE
safety device; failure of employer to use; effect.....	1602
safety statutes; failure to comply with; increased compensation.....	1601, 1602
serious and wilful misconduct; workman taking lumber away from bandsaw attempting to adjust rolls.....	485
service of notice of injury and claim for compensation.....	1605
text of Compensation Act.....	1593
third party; liable for injury; rights and liabilities of party..	1612
to whom Act applies.....	203, 1593, 1594, 1597
wages which are the basis of compensation.....	734, 1602
waiting period.....	548, 1597
waiver of provisions of Compensation Act.....	1593
when Act becomes effective.....	1595, 1615
wilful misconduct; engineer obeying orders of chief engineer going to a dangerous place.....	636 n
withdrawal of election; how given.....	1615
witnesses; contempt.....	1608
witnesses; production of books and papers.....	1607
WORKMAN EMPLOYING ASSISTANT OR SUBSTITUTE..	115
WORKMAN; who is a workman within the meaning of the Compensation Acts.....	106
WORKMEN'S COMPENSATION ACTS; efforts to pass Compensation Acts in the United States.....	9









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